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ADMINISTRATIVE LAW SECTION

AMERICAN BAR ASSOCIATION

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CONTENTS

CHAIRMAN'S PAGE 205

PROGRAM FOR ANNUAL MEETING 207

REPORT OF THE SECTION TO THE HOUSE OF DELEGATES 209

COMMITTEE REPORTS:

- Administrative Conference 218
- Agency Adjudication 224
- Agriculture 228
- Association-Section Liaison 231
- Aviation Law 232
- Communications 237
- Federal Register 244
- Health, Education and Welfare 250
- Hearing Examiners 251
- Immigration and Nationality 256
- Indian Matters 258
- Interstate Commerce 263
- Judicial Review 274
- Labor 282
- Membership 293
- National 295
- Natural Resources 299
- Nominating 308
- Postal Matters 312
- Public Contracts 314
- Securities 316
- State Administrative Law 320
- Veterans Committee 337

ADDRESS OF CHAIRMAN HARRIS TO THE INTER-AMERICAN BAR ASSOCIATION 338

MINUTES OF THE 1960 MIDYEAR MEETING 342

DIRECTORY OF SECTION MEMBERS 352

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CHAIRMAN'S PAGE

As an exponent of the philosophy of judicial self-restraint, Mr. Justice Frankfurter has written: "The admonition that judicial self-restraint alone limits arbitrary exercise of authority, is relevant every time we are asked to nullify legislation." [1] Observance of the same discipline by the legislative and executive branches will help to avoid undue interference by government in the functioning of our democratic society.

Reasonable governmental regulation is a concomitant of the free enterprise system. In the United States this regulation is exercised primarily through administrative agencies of our Federal and State governments. As Mr. Justice Frankfurter observed: "To a large degree they have been a response to the felt need of governmental supervision over economic enterprise—a supervision which could effectively be exercised neither directly through self-executing legislation nor by the judicial process." [2]

The justification for regulation is the protection of the public interest. But it is not for the administrative agency to determine what constitutes the public interest, and hence the extent and limit of its power. The legislature has the duty to make that determination and to confer, under adequate standards and safeguards, the authority to be exercised by administrative bodies. In doing so, the legislature should observe legislative "self-restraint" to the end that the administrative process does not become a "dead hand" of bureaucracy, stifling the business community over which it exercises supervision.

The Congress of the United States has acted wisely in delegating authority to administrative agencies over certain broad areas of the business economy. Transportation, communications, securities, power, and aviation call for the type of administration, subordinate to declared legislative policy, which independent regulatory agencies, acting in accordance with sound procedural safeguards, are best suited to perform. Whether or not other functions of government should be committed to the administrative process involves consideration not only of the problem but also of the most appropriate solution. The easiest way for the legislature to avoid a problem is by turning it over to a newly-created commission. The administrative process should be invoked only

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[1] West Virginia State Board of Education v. Barnette, 319 U.S. 624, 648 (1943).

[2] Federal Communications Commission v. Pottsville Broadcasting Co., 309 U.S. 134, 142 (1940).

where administrative action is clearly best suited to protect the public interest.

The legislature, moreover, should invoke self-restraint in respect to the powers which it does confer upon administrative agencies. The very reason for creating an administrative agency is contradicted by undue legislative supervision of the performance of its delegated responsibilities. Oversight there certainly should be, to the end that the declared policy of the legislature is observed; but interference there should not be so long as the agency fulfills that policy in an efficient manner with proper regard to the fundamentals of fair play.

Self-restraint in the exercise of delegated authority applies, as well, to the administrative agency itself. Where powers are broadly conferred there is always a temptation to exercise those powers to their uttermost limits. In the implementation of legislative policy administrators may well ask themselves whether activities which have seemed necessary in the past are really desirable in the present. Agencies are established to regulate—not to control. They may best fulfill this function by giving play to the economic forces committed to their regulation, exercising restraint where facts call for action, but otherwise permitting the economy freedom under and within the law.

The extent and direction of administrative action, finally, should be related to the conditions of the times. A robust economy can absorb more restrictions than a sick economy. And in periods of peace and stability we can afford more tinkering with our economy than in periods of war or near-war.

America, in this hour, is facing an unparalleled crisis in her national history—a crisis born of a new despotism, efficient and implacable—which challenges directly and fundamentally the very bases of our way of life. We must meet and surmount that challenge, or we shall perish as a nation and as a free people.

The government of a democracy provides the leadership for the nation. But it is the administration of government which determines the quality of that leadership. We shall need the best leadership government can provide if we are to repel the tide of despotism sweeping across the seas to our shores.

Administrative law is the law of democracy in action. Let us strive to perfect the administration of law in our democracy. For our task is no less than to save America and to preserve freedom in the world.

WHITNEY R. HARRIS, *Chairman*

1961 ANNUAL MEETING—CORONADO HOTEL, ST. LOUIS

SECTION OF ADMINISTRATIVE LAW

Program and Entertainment

Sat., Aug. 5, 12:00 noon. French Room
Luncheon Meeting of Council and Committee Chairmen

Sat., Aug. 5, 2:00 P.M. French Room
Meeting of Council and Committee Chairmen

Sun., Aug. 6, 10:00 A.M. French Room
Meeting of Council and Committee Chairmen

*Sun., Aug. 6, 1:00 P.M.
St. Louis Cardinals vs. Philadelphia Phillies, doubleheader at Busch Stadium

*Sun., Aug. 6, 6:00 P.M. Buffet
Theatre Buffet at Forest Park, after which the Logan-Koher comedy, "Wish You Were Here," will be presented

Mon., Aug. 7, 2:00 to 5:00 P.M. Grystal Room
2:00 to 2:15 P.M.—Report of Nominating Committee
2:15 to 5:00 P.M.—Chairmen of Federal Agencies discussing "Current Developments in Federal Administrative Procedure"

Hon. Everett Hutchinson, Chairman, ICC
Hon. William Cary, Chairman, SEC
Hon. Allan Boyd, Chairman, CAB
Hon. Newton N. Minow, Chairman, FCC
Hon. Jerome K. Kuykendall, Chairman, FPC
Hon. Philip Elman, Commissioner, FTC

Mon., Aug. 7, 6:30 P.M. El Cortez Room
Reception for Chairmen of Federal Agencies

Mon., Aug. 7, 7:30 P.M. Grand Ballroom
Annual Dinner (*Informal*)—with Section of Local Government Law
Speaker: General Elwood R. Quesada, "The Public Interest vs. the Vested Interest"

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* Entertainment arranged by the Bar Association of St. Louis for the American Bar Association.

Tues., Aug. 8, 9:30 A.M. to 12 noon. Grand Ballroom
9:30 to 10:00 A.M.—Committee Reports

10:00 to 10:30 A.M.—Model State Administrative Procedure Act—E. Blythe Stason and Frederic L. Kirgis
10:30 to 11:30 A.M.—Pretrial Procedures and Techniques in the Administrative Process—William Koplovitz, Francis W. Brown, and Hon. Alfred P. Murrah
11:30 to 12:00 noon—Judicial Review of Administrative Decisions—John N. Lynham and John F. Donelan

Tues., Aug. 8, 12:00 noon. El Cortez Room
Reception for Hon. James M. Landis

Tues., Aug. 8, 12:30 P.M. Grand Ballroom
Annual Luncheon—with Section of Judicial Administration
Speaker: Hon. James M. Landis, "Federal Agencies—1961"

Tues., Aug. 8, 2:00 to 5:00 P.M. Grand Ballroom
2:00 to 3:00 P.M.—Chairmen of Special ABA Committees Discussing "The American Bar Association Legislative Program in the Administrative Law Field"

Smith W. Brookhart, Moderator
Robert M. Benjamin—"Code of Administrative Procedure"
Raoul Berger—"Courts of Special Jurisdiction"
Donald C. Beelar—"Federal Administrative Practice Act"
Valentine B. Deale—"Permanent Congressional Committee on Administrative Procedure"

3:00 to 5:00 P.M.—Committee Reports
5:00 P.M.—Election of Officers and Council Members

*Tues., Aug. 8, 9:00 P.M.
Evening cruise by moonlight down the Mississippi on the S. S. Admiral. Buses leave hotel starting at 7:30 P.M.

REPORT OF THE SECTION TO THE HOUSE OF DELEGATES

RECOMMENDATIONS

I

The Section of Administrative Law recommends that the House of Delegates adopt the following resolutions:

WHEREAS, H.R. 6784 (87th Congress) would amend the legislative Reorganization Act of 1946 to require the submission of administrative regulations for review by committees of Congress as a prerequisite to their promulgation;

Now, Therefore, Be It Resolved, That the American Bar Association opposes enactment of H.R. 6784 (87th Congress) or any other similar legislation calling for or requiring Congressional review of the administrative regulations of federal administrative agencies as a prerequisite to their promulgation.

Resolved Further, That the Section of Administrative Law be and is hereby authorized to act for and on behalf of the Association in opposing such legislation.

II

WHEREAS, It has recently been recommended to the President of the United States that there be a return to the system under the Wagner Act, whereby the National Labor Relations Board appointed its own General Counsel, and appointed and directed the staff both in Washington and the Regional Offices, and

WHEREAS, Such system combines in one agency the functions of prosecutor and judge, and

WHEREAS, The Taft-Hartley Act, amending the Wagner Act, was intended to separate the prosecuting and adjudicatory functions of the National Labor Relations Board, and

WHEREAS, Sound administrative procedure requires such separation,

Now, Therefore, Be It Resolved, That the American Bar Association believes in preserving the functions of prosecution and

---

Reports of Sections or Committees of the American Bar Association, prepared for submission to the House of Delegates, are NOT to be construed to represent the official policy of the Association. Reports containing policy recommendations reflect Association policy ONLY as and when these recommendations are acted upon by the House of Delegates.

adjudication in separate hands and therefore opposes any attempt to reunite them, and

Be It Further Resolved, That the Administrative Law Section is authorized to represent the American Bar Association in presenting the Association's views on this matter.

III

WHEREAS, A special committee of the National Labor Relations Board has issued a recommended new set of Rules of Practice,

WHEREAS, Such rules have been carefully studied by a committee of the Administrative Law Section,

WHEREAS, In principle the American Bar Association endorses such rules

Now, Therefore, Be It Resolved, That the American Bar Association

1. Commends the recommended rules in general, and
2. Recommends that the report of the Administrative Law Section, Labor Committee, dealing with such rules be laid before the National Labor Relations Board for consideration; and

Be It Further Resolved, That the Administrative Law Section is hereby authorized to represent the American Bar Association in consultations with the National Labor Relations Board or in hearings before such Board directed to the effectuation of this Resolution.

IV

The Section of Administrative Law recommends that the House of Delegates approve amendments to the By-Laws of the Section, as set forth in its report, creating the Office of Chairman Elect, this recommendation subject to affirmative action on the proposed amendments by the Section at its 1961 Annual Meeting.

REPORT

I

H.R. 6784 (87th Congress), the text of which appears as Exhibit A of this report, would provide that before any proposed rule or regulation having the effect or import of legislative action to carry out the purposes of an Act of Congress shall be issued by any governmental agency exercising authority conferred there-

under, other than intra-agency administrative rules governing the conduct of its activities, or inter-agency rules governing relations with other agencies of the Government, a draft shall be submitted to the President of the Senate and the Speaker of the House; that the draft shall be assigned to the committee in each body which considered the original Act authorizing the issuance of the proposed rule or regulation; that the proposed rule or regulation may be approved or disapproved by either the authorized committee of the Senate or of the House, or a duly authorized subcommittee of either; that in the absence of action by either committee approving or disapproving such regulation or rule, it may go into effect not earlier than the fifteenth day following the date of receipt of the draft by the President of the Senate and the Speaker of the House; that if sooner approved by either committee it may go into effect immediately; that disapproval by either committee shall suspend its issuance, provided, that in the event of conflicting committee actions the earlier action shall govern, or different action may be agreed upon in conference by the two committees.

It would further provide that for the purposes of the Act, the committee or subcommittees required to review proposed administrative regulations or rules, may sit and act during recess and adjournment of Congress.

Desirable as it is that the Congress and its appropriate committees oversee diligently and without impediment all of the activities (including rule-making) of the administrative agencies it has created, and important as it is that the Congress and its appropriate committees be and remain free to take prompt remedial action whenever agency rule-making violates the spirit, letter, intent or purpose of the Act under which agency rules and regulations are made or is an abuse of or in excess of the powers granted by the Congress, it nevertheless seems clear that enactment of legislation of the character of H.R. 6784 (87th Congress) would be disruptive of the federal administrative process.

Enactment of such legislation could not help but serve in large degree to thwart one of the very purposes for which administrative agencies are created by unduly and unnecessarily circumscribing and delaying them in the exercise of their delegated rule-making powers. Such legislation would not only encumber and delay the administrative process but would also inevitably lead to a weakening of the desirable independence of administrative agencies. Further, it would likely lead to *ex parte* representations

and the exercise of political pressures at the level of Congressional committee review—in proceedings or processes which ought to be free of such influences.

The regulatory authority of the federal agencies would be seriously impaired. Such legislation as that proposed might well, in many cases, open the door for two separate rule-making proceedings with respect to a given rule or regulation—one before the agency and one before the Congress—with the agency in the position of having to defend and justify its position before a committee or subcommittee of the Congress prior to the effectiveness of the proposed rule or regulation. (It is assumed, although the proposed legislation would give no assurance on the point, that the agencies and others interested would be afforded opportunity to be heard by the committee or subcommittee to which the draft of proposed rule or regulation would be assigned for study.)

The effect upon a regulatory agency of having to defend and justify proposed rules and regulations as being in conformity with the spirit, letter, intent and purpose of the Act under which it is proposed to proceed, and to demonstrate that no unusual or unexpected use of the powers therein granted is involved, would be so substantial and potentially detrimental as to bring the agency's regulatory activities to a virtual standstill in important areas of function. The loss of effective regulatory authority in vital areas would, of course, seriously hamper the agency's effectiveness.

Finally, there is a possible constitutional point. *Quaere* whether a statute of the kind proposed, permitting a subcommittee or committee of the Congress to "veto" an otherwise valid exercise of agency rule-making power, granted through an Act of Congress duly enacted by the Senate and the House of Representatives and approved by the President, is constitutional? See Ginnane, *The Control of Federal Administration by Congressional Resolutions and Committees,* 66 Harv. L. Rev. 569 (1953); Schwartz, *Legislative Control of Administrative Rules and Regulations: The American Experience,* 30 N.Y.U. L. Rev. 1031 (1955); Davis, *Administrative Law,* sec. 6.08.

II

The Section of Administrative Law requests the adoption by the House of Delegates of resolution II above, disagreeing with the recommendation made in some quarters that there be a re-

turn to the Wagner Act system under which the National Labor Relations Board appointed its own General Counsel, and appointed and directed the staff both in Washington and the Reigonal offices. The Resolution would also authorize this Section to represent the American Bar Association in all appropriate places to present the Association's views on this matter.

The recommendation, with which the Resolution expresses disagreement, would re-establish the scheme under which the NLRB would be both prosecutor and judge in unfair labor practice cases. This is contrary to the plan of the Taft-Hartley Act, which was enacted in 1947 chiefly for the purpose of separating the NLRB's prosecuting and adjudicatory functions. Such separation would appear particularly desirable in order to avoid abuse in so highly charged a field as labor management relations. A return to the Wagner Act system of combining in one agency the functions of prosecutor and judge would appear contrary to the public interest. A report of this Section's Labor Committee on this subject is submitted herewith.

On March 30, 1961 this Section submitted to the Labor Relations Law Section for comment the aforesaid report of its Labor Committee. On April 4, 1961 additional copies of such report were furnished the Labor Relations Law Section at the request of the liaison representative of such Section with this Section. Again on April 20 and on June 2, 1961 that Section was requested to submit its views on this matter. Such Section has not submitted any such views either on the report or on the attached resolution.

III

For almost a year the Labor Committee of this Section has been engaged in studying the rules of practices for the National Labor Relations Board recommended by a committee headed by former Board member Joseph A. Jenkins, now Regional Director of the National Labor Relations Board in Albuquerque, N.M. The recommended rules are comprehensive and it seems clear that their preparation involved a great amount of careful study and work.

Our Labor Committee, composed of approximately 35 attorneys representing labor unions, management, government, and the labor law teaching profession, has submitted a detailed report (a) in general commending the recommended rules for their lu-

cidity and their clarification of NLRB procedures, but (b) recommending certain changes in them further to improve such procedures. The recommended rules, among other things, provide for greater finality for Trial Examiner's decisions and establish certain standards, comparable to those employed by the U.S. Supreme Court in the exercise of its certiorari jurisdiction, for taking appeals to the NLRB from Trial Examiners' decisions. This accords with the President's recently submitted reorganization plan for the NLRB and should facilitate the NLRB's disposition of cases.

The Section therefore recommends to the House of Delegates that it adopt Resolution III above, which the Council of this Section has approved after extended discussion both at its midyear meeting in February, 1961 and at a special meeting held in Washington, May 20 and 21, 1961. The resolution commends the recommended rules in general and recommends that the report of our Labor Committee be laid before the NLRB for its consideration. The resolution further authorizes the Section to represent the American Bar Association before the NLRB in effectuating the resolution.

The Administrative Law Section, since January 11, 1961, sought the views of the Labor Law Section on this matter but, to date, they have not yet been received. However, a copy of this Report has been lodged with the Council of the Labor Law Section and perhaps the views of that Section will be made known to the House.

IV

At present the officers of the Section consist of a Chairman, Vice-Chairman, and a Secretary. These officers are elected at the annual meeting of the Section. Selection of committee chairmen and other committee appointees does not begin until after the annual meeting. This results in a delay of several weeks in the organization of the work of the Section. To overcome this difficulty it is proposed to change the title of the office of Vice-Chairman to Chairman-Elect and to provide that the Chairman-Elect will automatically succeed the Chairman. This will enable the Chairman-Elect to select committee chairmen and other members of the committees in advance of the annual meeting. Delay in organization of the work of the Section will thus be eliminated.

The text of the proposed amendments, which will be submitted

to the Section for its action at the 1961 Annual Meeting, appears as Exhibit B of this report.

Respectfully submitted,
WHITNEY R. HARRIS, *Chairman,*
Section of Administrative Law

EXHIBIT A

87TH CONGRESS
1ST SESSION

H.R. 6784 130098

IN THE HOUSE OF REPRESENTATIVES

May 3, 1961

Mr. Moulder of Missouri introduced the following bill; which was referred to the Committee on Rules

A BILL

To amend the Legislative Reorganization Act of 1946 to authorize the review of the administrative regulations by committees of Congress prior to their promulgation, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 136 of part 3, title 1, of Public Law 601, Seventy-ninth Congress, is hereby amended by designating the present section as paragraph "(a)," and adding another paragraph as follows:

"(b)(1) Before any proposed rule or regulation having the effect or import of legislative action to carry out the purposes of an Act of Congress shall be issued by any governmental agency exercising authority conferred thereunder, other than intra-agency administrative rules governing the conduct of its activities or interagency rules governing relations with other agencies of the Government, a draft thereof shall be submitted to the President of the Senate for the Senate of the United States and to the Speaker of the House for the House of Representatives.

"(2) The submitted draft of such proposed rule or regulation shall be immediately assigned to the committee in the Senate and to the committee in the House of Representatives, respectively, which considered the original Act under which the agency acted in the issuance of the proposed rule or regulation, for study, to consider whether such rule or regulation is made in conformity with the spirit, letter, intent, and purpose of the Act, and whether or not such rule or regulation is an abuse of or in

excess of the powers granted by Congress. Such regulation or rule may be approved or disapproved by either the authorized committee of the Senate or of the House of Representatives, or a duly authorized subcommittee of either. In the absence of action by either committee approving or disapproving such regulation or rule, it may go into effect not earlier than the fifteenth day following, but not including, the date of the receipt of the draft of such proposed regulation or rule by the President of the Senate and the Speaker of the House of Representatives. If sooner approved by either committee, it may go into effect immediately upon such approval. Disapproval of such regulation or rule by either committee shall suspend its issuance: Provided, That in the event of conflicting committee actions the earlier action shall govern, or different action may be agreed upon in conference by the two committees.

"(3) For the purposes of this Act the committees of the Senate and the committees of the House of Representatives, or any duly authorized subcommittees thereof, required hereunder to review proposed administrative regulations or rules, are authorized to sit and act during the sessions, recesses, and adjourned periods of the Congress.

"(4) This paragraph shall be effective from the date of its approval."

EXHIBIT B

Proposed Amendments to the By-Laws of the Section of Administrative Law

Article III, Section 1 is amended to read as follows:

Section 1: The Officers of this Section shall be a Chairman, Chairman-Elect and Secretary.

Article III, Section 2 is amended to read as follows:

Section 2: There shall be a Council, which shall consist of the Chairman, the Last Retiring Chairman, the Chairman-Elect, the Secretary, and the Section Delegate, all of whom shall be members ex officio, together with twelve other members to be elected by the Section as hereinafter provided.

Article III, Section 3 is amended to read as follows:

Section 3: As used in Articles III, IV, and VI of these By-Laws a year shall be deemed to commence at the close of the annual meeting of the American Bar Association and to end at the close of the next annual meeting. The Chairman-Elect and Secretary shall be nominated and elected each year in the manner herein-

after provided, and shall hold office for a term of one year. The Section Delegate shall be nominated and elected each even-numbered calendar year and shall hold office for a term of two years.

(a) In the year 1962, there shall be elected a Chairman in addition to a Chairman-Elect, a Secretary and a Section Delegate.

(b) Subsection (a) of this section together with this subsection shall be dropped from these By-Laws after elections for officers to serve in 1962 have taken place.

Article V, Section 2 is amended to read as follows:

Section 2: Chairman Elect. The Chairman-Elect shall succeed automatically to the office of Chairman upon the expiration of the term of the Chairman. In event of the disability of the Chairman, the Chairman-Elect shall perform the duties of his office during the time such disability continues. Upon the death, resignation, or refusal to act of the Chairman, the Chairman-Elect shall perform the duties of his office for the remainder of his term.

Article VI, Section 3 is amended to read as follows:

Section 3: The Council during the interim between annual meetings of the Section, may fill vacancies in its own membership or in the offices of Chairman-Elect, Secretary, or Section Delegate, and, in the event of a vacancy in both the office of Chairman and Chairman-Elect, then in the office of Chairman. Members of the Council and officers so selected shall serve until the close of the next annual meeting of the Section, except in the case of the Section Delegate, who shall serve for the remainder of the term.

REPORT OF THE COMMITTEE ON ADMINISTRATIVE CONFERENCE

At the 1961 Midyear Meeting in Chicago the Council of the Section considered a bill prepared by the Special Committee on Legal Services and Procedure (herein "Legal Services Committee") to establish an Administrative Conference of the United States. The bill had been incorporated in a resolution which was on the agenda of the House of Delegates' midyear meeting and had been drafted in response to a House resolution adopted at the 1959 Annual Meeting authorizing the Legal Services Committee and the Administrative Law Section jointly to represent the Association in working with government representatives to organize an interim conference, and to report to the House at its 1960 midyear meeting recommending legislation for the permanent organization and operation of a conference.

The Council, after extensive discussion, adopted a resolution providing that (a) the House of Delegates be informed that the Section recommended deferring action on the bill of the Legal Services Committee until not later than the 1961 Annual Meeting and (b) the Section Chairman appoint a committee to draft legislation to establish a permanent conference. The resolution directed the Committee

> (1) to observe the organization and operations of the conference to be established by executive order;
>
> (2) on the basis thereof, to prepare and submit to the Chairman by July 1, 1961 proposed legislation; and
>
> (3) in developing such legislation, to consult with the Legal Services Committee.

Following the action of the Council, the Chairman of the Legal Services Committee moved the House of Delegates to defer consideration of its report, which motion was adopted by the House without discussion. Pursuant to the resolution of February 19 Chairman Harris constituted a committee composed of the fol-

Reports of Committees of the Section are NOT to be construed to represent the official policy of the American Bar Association or of the Section of Administrative Law. Reports reflect Section and Association policy ONLY as and when they are acted upon by the Section and by the House of Delegates.

lowing eight members of the Section: Richard H. Keatinge; Earl W. Kintner; John M. Lynham; C. Roger Nelson, Chairman; Bryce Rea, Jr.; C. Frank Reifsnyder; Harold L. Russell, Vice Chairman; and Bradford Ross.

The Committee promptly undertook a review of background material and there was circulated among the members a comparative analysis of the bill proposed by the Legal Services Committee and the draft by-laws which had been prepared by the organizing committee for the President's Conference appointed by Judge Prettyman. On March 23 members of the Committee and representatives of the Legal Services Committee met with Judge Prettyman to acquaint him with the Committee's assignment and to receive his suggestions and advice. The Judge very generously gave a full account of the historical development of the Administrative Conference beginning with the first President's Conference in 1953. He then traced the developments leading to President Eisenhower's request that he undertake the organization of a new conference. He further indicated in a general way what he expected of the Executive Order establishing another conference and the probable timetable for getting underway with the conference.

On the question of primary interest to this Committee, Judge Prettyman made clear that he felt that it would be a mistake to attempt to freeze the organization of the conference into statutory form until sufficient experience has been developed under the conference established by Executive Order. He recognized the probability that as a long range matter, it would be desirable to have legislation relating to the Conference, and was aware of the problem of assuring adequate appropriations and of dealing with the conflicts problem. But he reiterated that legislation should not be pressed until there has been experience with the conference established by the President. After the session with Judge Prettyman, and on the same day, the members of the Committee held an organization meeting and discussed how to proceed with the Committee's work.

On April 13 the President issued his special message to Congress on the regulatory agencies and his Executive Order for the establishment of the Administrative Conference. The Executive Order directs the conference to make a "final report not later than December 31, 1962 summarizing its activities, evaluating the need for further studies of administrative procedures, and suggesting

appropriate means to be employed for this purpose in the future." The President's message states that the Council of the Conference is to consider various questions "along with the desirability of making this Conference, if it proves itself, a continuing body for the resolution of these varied and changing procedural problems."

On April 30 announcement was made of the appointment of Judge Prettyman as Chairman and 11 others as members of the Council of the new Administrative Conference (see list appended to this report).

On May 10 a further meeting of this Committee was held. Those members present endeavored to review the factors bearing on the work of the Committee and the feasibility of completing its assignment in accordance with its mandate. It was recognized that serious consideration must be given to the views expressed by Judge Prettyman. Those present were troubled as to what form of legislation could properly be proposed in the present posture of developments. The Committee had been directed to draft legislation on the basis of its observation of the organization and operation of the Conference established by Executive Order. Yet the Conference was not to meet until the latter part of June. Concern was expressed over the wisdom of attempting to deal in specific terms with the matters covered by the Legal Services Committee bill and the draft by-laws pending further observation of the organization and initial functioning of the President's Conference.

At the same time, it was recognized that there are substantial reasons for attempting to move ahead in some fashion with a legislative program. The 1959 resolution of the House of Delegates had authorized the Legal Services Committee and the Section to report on recommended legislation for the permanent organization and operation of a Conference. The Legal Services Committee had deferred consideration of its bill to permit the Section to develop its views on any improvements in the legislative approach. Finally, it was observed that the further delays which could occur in connection with ABA procedures might make it difficult to obtain an Association approved bill in time for Congressional action before the end of 1962. While recognizing the arguments for moving ahead, those present were also aware of the difficulty of determining at this stage the form which permanent legislation should take and the possible disadvantages of seeking to have the Section and House of Delegates endorse specific legislation which further developments, especially the experi-

ence with the President's Conference, might show to be unsuitable.

It was the consensus of the Committee members attending the May 10 meeting that the Chairman should report the foregoing considerations to the meeting of the Council which was to convene May 20, and seek such further guidance and instructions from the Council as it might see fit to issue. On May 21 the Council, after receiving the Committee's interim report, extended to January 1, 1962 the deadline for reporting a draft bill. The new date was adopted to give the Committee time to observe the organization and early operations of the President's Administrative Conference as a basis for drafting legislation for a permanent conference. Since the May meeting, a preliminary draft of a bill to establish the Conference on a permanent basis has been prepared and circulated among the members of this Committee for comment.

The President's Conference has been organized and has begun to function. During May and June meetings of its Council were held in Washington at which the Council determined the general membership of the Conference, developed recommendations for standing committees, discussed topics to be studied by the Conference and its committees, and agreed upon by-laws to be proposed for adoption by the Conference. The Conference has 86 members consisting of the 11-member Council, 44 general members in federal government service designated by 31 departments and agencies invited to select members, two federal hearing examiners, and 29 general members outside federal government service, including 21 lawyers who are in private practice and three law school faculty members. In addition, the President of the Senate and Speaker of the House were each invited to designate three members of Congress from interested committees to participate in the activities of the Conference.

The first plenary session of the Conference was held June 27 in the new State Department Building in Washington. The session was addressed by the Honorable Robert F. Kennedy, Attorney General of the United States and by Dean Landis, Special Assistant to the President. The Attorney General referred to the vital interest of the President in the work of the Conference. Dean Landis expressed the hope that the Conference would succeed in maintaining a "constant evaluation of the administrative process."

The Conference adopted without change the by-laws proposed by the Council. Judge Prettyman noted that the Conference, as

designed by the by-laws, is to produce constructive suggestions and remedies, that accordingly committees of the Conference are to submit their reports and recommendations separately, and that the subjects for Conference action will be the recommendations. Under the by-laws adopted by the Conference provision was made for nine standing committees as follows:

Personnel
Internal Organization and Procedure
Rule-Making
Licenses and Authorizations
Compliance, Enforcement, and Disciplinary Proceedings
Adjudication of Claims
Statistics and Reports
Information and Education
Judicial Review

There was presented to the Conference a statement of specific subjects and questions to be studied and investigated by the Conference and its committees.

Committee designations of the general membership of the Conference were announced and initial meetings of the committees were held the afternoon of June 27. Also announced were the names of persons who are to serve as reporters or staff directors for the standing committees (see list appended to this report).

The next meeting of the Council is scheduled for September 18 and the next plenary session of the Conference is to be held December 5.

During the June 27 meeting, Judge Prettyman observed that, while the Conference must report to the President by December 31, 1962, one of the most important features of the report will be recommendations as to continuance of the Conference or establishment of a similar conference on a permanent basis and that "we are aiming at a continuing process, even though our actual existence is limited to the year and a half."

Since the May meeting of the Council of the Section, a preliminary draft of a bill to establish an Administrative Conference on a permanent basis has been prepared and circulated among the members of this Committee for comment.

C. Roger Nelson, *Chairman*

Council of the Administrative Law Conference of the United States

Hon. E. Barrett Prettyman, Chairman; Manuel F. Cohen, Director, Division of Corporation Finance, Securities and Exchange Commission; Prof. Walter Gellhorn, Columbia University Law School; Joseph P. Healy, Vice-President and General Counsel, Boston-Edison Co.; Everett Hutchinson, Chairman, Interstate Commerce Commission; Hon. James M. Landis, Special Assistant to the President; John D. Lane, Attorney, Washington, D. C.; Prof. Earl Latham, Amherst College; Carl MacGowan, Attorney, Chicago, Illinois; Prof. Nathaniel L. Nathanson, Northwestern University Law School; and Max D. Paglin, General Counsel, Federal Communications Commission.

Reporters or Staff Directors of Standing Committees of the Administrative Conference of the United States

Personnel: Professor Wilbur Lester, University of Cincinnati; Internal Organization and Procedure: Professor Carl Auerbauch, University of Minnesota; Rule-Making: Professor Roger Cramton, University of Michigan; Licenses and Authorizations: Professor William K. Jones, Columbia University; Compliance, Enforcement, and Disciplinary Proceedings: Professor Robert B. McKay, New York University; and Judicial Review: Dean Robert Cramer, George Washington University Law School.

REPORT OF THE COMMITTEE ON AGENCY ADJUDICATION

The Committee on Agency Adjudication worked during the year 1960-1961 on two tasks assigned to it by the Chairman of the Section of Administrative Law.

The first of these tasks was to study, and report to the Council and Section on, the proposal by Senator Everett McKinley Dirksen (R.Ill.), as this proposal is embodied in S. 3795, 86th Cong., introduced July 1, 1960, for a uniform code of procedure to apply generally to administrative proceedings in the federal departments and agencies. A preliminary report of this Committee's work on this first task was made to the Section Council at its February 1961 meeting.

This Committee took as its point of departure in this first task the final report of the Section's Committee on Improvement of Administrative Procedure, filed in 1960 (12 *Adm. Law Bull.* 254 (1960)). That report set forth the results of a study by that Committee of S. 2849, 86th Cong. (1960), which bill embodied an earlier form of Senator Dirksen's proposal.

The members of this Committee were asked by its chairman to state in writing their views on S. 3795, in the light of the 1960 study of S. 2849 by the Committee on Improvement of Administrative Procedure and otherwise. In particular, specific comments on specific provisions of S. 3795 were sought, it being felt that such comments would be especially valuable since they could be drawn from the concrete evidence to be found in the very large reservoir of information and insights formed when the experiences and backgrounds of all of this Committee's members were pooled. It was suggested that the members address themselves to the following questions, in addition to whatever else they might wish to say:

> "*Question 1. (a)* Do you, or do you not believe, that the final report of the Committee on Improvement of Administrative Procedure was right in its generally unfavorable view of S. 2849?
>
> *(b)* What are your principal agreements and/or disagreements with that report, and your principal reasons for these?"
>
> "*Question 2. (a)* Are you in general favorable or unfavorable toward the purpose of S. 3795? Toward the solution proposed by it?

(b) In what principal respects, and for what principal reasons?"

"*Question 3.* What specific comments on specific policies or provisions of S. 3795 should be emphasized in the preliminary report of the present Committee?"

A substantial volume of replies was received, reflecting extensive and careful study and thought by the members. The preliminary report of this Committee summarized very briefly the points made most frequently, and on which there seemed to be the widest agreement, as follows:

1. Answers to Questions 1(a) and 2(a) were, by a considerable majority: agreement with the generally unfavorable view of S. 2849 stated in the final report of the Committee on Improvement of Administrative Procedure; disagreement with the purposes of S. 3795 (if those purposes are defined as legislative enactment of a detailed uniform code of procedure of the type the bill includes); disagreement with the solution proposed by S. 3795.

2. There seemed to be substantial consensus that it would be difficult and undesirable to set up a code of procedure applicable to all agencies which would be much more detailed than the ABA's proposed Code.

3. Several members remarked that legislation is too cumbersome a tool for the establishment of detailed procedural rules, and suggested an Office of Administrative Procedure, with power to study procedural problems, and to promulgate (and amend) uniform rules where feasible. Several members stated that the federal judicial experience had been that detailed legislation on procedure was undesirable, and that rules promulgated by a judicial conference and by individual courts provided a better approach, and suggested that the analogy was applicable to administrative procedure.

A general comment frequently made was that the procedures the bill would provide are too complex for a great many administrative proceedings. Various specific examples were offered.

4. There was considerable support for an approach to the problem of *detailed* uniform procedural rules via a permanent conference, somewhat along the lines of the Administrative Conference; members urging this view seemed to feel that a basic framework statute laying down general rules, plus a conference to produce specific rules, would be a better arrangement than a detailed uniform statute.

5. Some members argued that many of the provisions of the bill would not be well adapted to several common types of

administrative proceeding which are not really adversary in nature. Again, various specific examples were offered.

6. In this connection, it was suggested that although there is a substantial volume of administrative proceedings to which the bill's provisions would be well adapted (*i.e.*, ones closely analogous to adversary judicial proceedings), most of these would be excepted from S. 3795 by its Sec. 1101(a)(3) because they would involve claims for less than $3000.

7. Numerous specific objections to the bill were voiced. An example of these is the point that Sec. 609(e)(1) would in effect make the hearing examiner's findings less open to examination for evidential support by the agency than the agency's fact findings are open for examination by reviewing courts under existing law. This would create the anomalous situation of an agency being subject to reversal by a court for an examiner's error which it was powerless to correct.

Although, as indicated, the weight of comment on S. 3795 was critical or unfavorable, there was an appreciable volume of favorable comment as well. Many of these favorable comments praised the bill for setting forth an organized body of explicit proposals for uniform rules, and thus providing a document around which discussion of the problems could be organized and focused. There was also considerable favorable comment on individual parts of the bill, notably those dealing with prehearing conferences, discovery, narrowing of issues, motion and hearing practice, and the delegation of decision-making power to the presiding officer.

The February 1961 preliminary report of this Commtitee was based on its members' comments.

After the preliminary report was made, this Committee proceeded to the second of the two tasks assigned it by the Chairman of the Administrative Law Section. This second task was to compare, and critically analyze and discuss, the rules proposed in S. 3795 with the rules now in effect in the principal regulatory agencies, for the purpose of determining the ways in which the S. 3795 rules differ from generally accepted administrative practice, and for the further purpose of providing a study by this Committee on the subject of uniform rules generally. The members of this Committee were again asked to state in writing their views, with emphasis upon comparisons of specific S. 3795 rules with those of the agencies with which the members might be familiar.

Again, as with the first task, a substantial volume of replies was received, reflecting again extensive and careful study and thought by the members.

Unfortunately, the range and diversity of the comments was such as to defy adequate summary. This Committee has made a beginning on its second task, and valuable materials have been collected, but at present even a preliminary report on the substantive aspects of this task is impossible.[1]

Enough has been accomplished, however, to suggest three observations of procedural aspects. (1) The task is a very large one, but it can be accomplished, if not exhaustively then at least on the basis of a representative sample of agencies and rules. (2) The task is undoubtedly valuable and important; discussion of the broad and vital issue of uniform rules would be much facilitated if the concrete evidence its accomplishment would produce were available. (3) Work on it should take careful account of other work on uniform rules, notably that of the President's Conference and that of the recently-established Administrative Conference.

WINSTON M. FICK, *Chairman*

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[1] The chairman of this Committee wishes to record his belief that this unsatisfactory state of affairs is the result of his failure to organize the undertaking properly. It is now clear that he should have set up subcommittees, each charged with work on a single agency. If the task is continued in 1961-62, as he respectfully urges that it be, this approach might well be considered.

REPORT OF THE COMMITTEE ON AGRICULTURE

The Committee on Agriculture met at New Orleans on December 1, 1960 to consider matters brought up by several of its members. There were two major subjects discussed by the Committee which are of sufficient importance to justify including them in this report. These are (1) Code of Ethics legislation relation to communications between private parties and administrative agencies and (2) possible improvements in administrative procedure in the Department of Agriculture through changes in the regulations of the Department or in the application of existing regulations. In the Committee's opinion there are several matters in connection with proposed legislation relating to communications between parties and agencies that should be brought to the attention of the Section.

Many of the administrative proceedings in the Department of Agriculture, and undoubtedly in other governmental agencies, as well, where the rules must be based on evidence adduced at a hearing, are proceedings for the establishment of rules of general applicability to all parties engaged in the described activity in the industry involved. In many cases consumers or the public generally also have an interest.

The actual conduct of the hearings in developing records as a basis for the establishment of such rules should be conducted in an orderly and efficient manner. However, there is no reason for, and there are many reasons against, applying the broad communication prohibitions contemplated by the proposed legislation to such proceedings. Such prohibitions are practical in the case of proceedings where decisions are sought between particular parties, or in the case of mutually exclusive applications for single licenses. However, in the making of generally applicable rules, even though the rules must be based on the record after an opportunity for a hearing, the proceeding is really one of a legislative nature. Its purpose is merely to develop facts and information as an aid in determining the details of the regulation of an industry under standards prescribed by Congress in the appropriate enabling statute. In many respects these proceedings are comparable to hearings before Congressional committees. A free exchange of views between interested and informed members of the public

and the agency is important since it promotes the efficiency of the proceedings and furthers the general public's interests. Communications in such cases should not be banned by any prohibition primarily aimed at proceedings between agencies and specific parties.

It is no answer to the above claim of distinction between different types of proceedings to say that there is no distinction just because in both cases the statute requires the decision to be based on the record after an opportunity for a hearing.

The fact that the statute in each case requires a hearing is not the gist of the comparison between the two types of proceedings. The real point of distinction is the nature of the intended result. In one case the result is a determination of the rights of specific individuals. In the other case, it is the development of rules of operation for an entire industry or segment thereof. The first type of proceeding is adjudicatory, the second type legislative.

Furthermore, it is no answer to this claim of distinction and exception from a general communications ban to say that the Acts providing an opportunity for hearing in the generally applicable type of rule making could be amended to take out the hearing requirement. The hearing in such cases has been authorized by Congress in the public interest as a basically desirable mechanism in aid of the exercise of informed judgment by Government officials in the performance of properly delegated legislative functions. It should not be eliminated just because it may cause some difficulty in delineating a distinction and partial exemption in legislation relating to communications between parties and agencies.

There has been an attempt to re-define "record" in the provisions of some of the anticommunication bill drafts. This will only lead to confusion because the definition should be contained in the Administrative Procedure Act as it is now in Sections 7 and 8 and in any revision into the Administrative Code, rather than in a Code of Ethics law.

It is the opinion of the Committee that much can be accomplished through cooperation between the Committee and the Department of Agriculture toward attaining the objective of cutting down the length of hearings and the size of hearing records in some agricultural proceedings. It is hoped that some of the improvements which may be developed through this means will be worthy of study by other agencies also. The committee believes that a great deal of improvement can be derived from a substan-

tial review and analysis of the regulations of the Department of Agriculture with a view to revision thereof where warranted, plus encouragement of better application of the regulations by the Hearing Officers and other Department personnel. The Committee was advised by Mr. Charles W. Bucy, Vice Chairman, who is also Assistant General Counsel of the Department of Agriculture, that a comprehensive study of this matter had been made recently within the Department and that the results were being considered and analyzed with a view to revision of various rules of practice. The Committee has arranged through Mr. Bucy for copies of drafts of proposed revisions of the regulations to be circulated among members of the Committee for informal comment as such drafts are developed by the Department and the Committee has been assured that Department people working on the matter will appreciate suggestions by the Committee members.

Some of the matters considered by the Committee as offering room for possible improvement were:

(a) More specific definitions of issues in pleadings.

(b) Provision for submission and circulation of written evidence—particularly statistical—by both the government and other parties in advance of formal hearing procedures.

(c) Filing of advance notices of intention to testify on stated issues.

(d) Pre-hearing conference procedures.

(e) Sharper limitation of direct and cross-examination, particularly when repetitious, either by the same or different parties. (On this subject, it is the opinion of the Committee that the Agency may properly implement the general language of the Administrative Procedure Act by specificity in its regulations and directions therein to its Hearing Officers, particularly in the legislative investigatory type of hearings leading to rules of general applicability.)

The Committee recommends for the consideration of the Section that provisions be included in code of conduct bills supported by the Association which would permit the agency involved to specify in any hearing notice a date later than the date of issuance of the notice of hearing but not later than the close of the hearing as the date after which there may be no communications on substantive matters in rule-making hearings where the rules are of general applicability even though the hearing is required by statute.

FRANK B. LENT, *Chairman*

REPORT OF THE ASSOCIATION-SECTION LIAISON COMMITTEE

This new Committee was organized to provide a means of informing other sections and committees of the Association of the activities of the Administrative Law Section, of securing the views of other sections and committees and also of bringing to the attention of the Administrative Law Section matters of interest under consideration by other sections and committees.

The Committee has functioned in accordance with plan and has distributed, through its members, to other sections and committees of the Association, information as to the agenda and other matters under consideration by the Administrative Law Section, has received the views of other sections and committees and has presented those views to the Administrative Law Section through its Council and committees.

It is the belief of the Association-Section Liaison Committee that it performs a service of value to the Section and to the Association, particularly in the area of fostering intersection/committee cooperation and exchange of views and that the work of this Committee should be continued.

HAROLD L. RUSSELL, *Chairman*

REPORT OF THE COMMITTEE ON AVIATION LAW

Before outlining the work of the Committee during the current calendar year, it appears desirable to outline briefly the status of the main projects undertaken or commenced, and problems considered, by the Committee during the calendar year 1960:

Status of Problems Considered by Committee During Calendar Year 1960

(1) *Ex Parte Representations to Administrative Agencies, Including the Question of Congressional Appearances Before Administrative Agencies.* In May of 1960, the membership of the Aviation Law Committee, by a vote of 15 to 1, recommended the elimination of all ex parte representations to administrative agencies, as well as the elimination of appearances by members of Congress at oral arguments before such agencies. Such approval followed submission to the full Commitee, on April 28, 1960, of a formal report prepared by a three-man subcommittee under the chairmanship of Mr. Coates Lear of Washington, D.C.

The Council of the Administrative Law Section, at its meeting in Washington, D.C., in August of 1960, declined to approve the Committee's general recommendations with respect to ex parte representations to administrative agencies; the Council did, however, approve, in modified form, the Committee's recommendation with respect to Congressional and other ex parte appearances at oral arguments before administrative agencies, and this latter recommendation was, in turn, approved by the Section and, subsequently, by the House of Delegates of the American Bar Association. The recommendation and resolution of the Section, as submitted to, and as approved by, the House of Delegates, at its August 1960 meeting, is reproduced in full as Exhibit A to the present Report.

In December of 1960, the Civil Aeronautics Board amended parts 300 and 302 of its Procedural Regulations, effective December 6, 1960, to cover many of the principal problems presented by the presentation of ex parte communications to the Board. In May of 1961 the Civil Aeronautics Board amended Part 302, Rule 14, of its Principles of Practice so as to bar Congressmen and State Officials from oral argument in Board proceedings; the new Rule

will permit persons who are not parties to a proceeding to appear and/or submit written statements only at the trial-examiner stage of a proceeding. Thus, Congressmen and State Officials will not be completely excluded from Board proceedings, but must appear at hearings before a trial-examiner or must submit statements prior to the close of a hearing in order that all parties to a proceeding may have an opportunity to support or to rebut any such statements.

In view of the foregoing, it did not appear either necessary or advisable for the Committee to take further action in this field during the current year.

(2) *Proposed Formation of a Civil Aeronautics Board Practitioners' Association.* In May of 1960, the membership of the Aviation Law Committee, by a vote of 12 to 4, approved the formation of a Civil Aeronautics Board Practitioners' Association. Such approval followed submission to the full Committee, on April 20, 1960, of a formal report prepared by Mr. Theodore I. Seamon of Washington, D.C.

The Council of the Administrative Law Section, at its meeting in Washington, D.C. in August of 1960, declined formally to approve the formation of a Civil Aeronautics Board Practitioners' Association, but adopted, after discussion, a substitute motion, reading as follows:

> " 'The Council recommends to the Section the adoption of the following resolution:
>
> " '*Resolved,* That the Section of Administrative Law looks with favor upon the formation of a Civil Aeronautics Board Bar Association and commends the Aviation Law Committee for its activity and report on this matter.' "

The foregoing resolution was not, however, adopted by the Section of Administrative Law at its meeting held following the Council meeting; after a vote of the Section, it was determined that, as a matter of principle, the Section should not involve itself in this matter.

Although your Chairman is still of the opinion that the formation of such a Practitioners' Association would be highly desirable in assisting members of the Aviation Bar in the discussion of non-adjudicatory matters with the Civil Aeronautics Board, it did not appear, in view of the August, 1960, action of the Section, that any useful purpose would be served by a continued review or study of this matter. Accordingly, this matter was not presented

for further consideration by the Committee during the current year.

(3) *Memorandum of Louis J. Hector to the President Entitled "Problems of the Civil Aeronautics Board and the Independent Regulatory Commissions."* The principal project commenced by the Aviation Law Committee during the calendar year 1960 was the study of the so-called "Hector Report" and certain of the numerous critiques thereof.

The entire membership of the Aviation Law Committee was broken down into five subcommittees, each subcommittee giving consideration to one of the five areas appearing under its respective title in the "Hector Report" and in the responses thereto, to wit:

"Planning and Administration,"
"Adjudication,"
"Policy Coordination,"
"Duties and Responsibilities," and
"Agency Membership."

Completed subcommittee reports have not been received from all of the foregoing five subcommittees. After consideration of the five subcommittee reports by the full Committee, the Committee will submit its final report on the Hector Memorandum to the Council for further action; it is hoped that the final report of the full Committee will be ready for consideration by the Council at the next meeting thereof. (Parenthetically, it should be noted that further discussions of the "Hector Report" may seem to have a somewhat academic flavor in view of rapidly moving developments in the Federal administrative field during the current year; however, it is still the feeling of the Committee that much will be gained by attempting to lay down guide lines and standards for future procedural action in the aviation law field, and that this can be started as well with a study of the Hector Report and the responses thereto as from any other vantage point.)

New Matters for Consideration by The Committee During The Calendar Year 1961

(1) *1961 Reports Bearing on Activities of the Civil Aeronautics Board.* In the spring of 1961 there appeared four reports to the Civil Aeronautics Board, to Congress and to the President, which bear on activities of the Civil Aeronautics Board, and which ap-

peared to be deserving of scrutiny by the Aviation Law Committee; no doubt, during the present Session of Congress, additional reports will appear which will merit attention and examination. The four recent reports and studies which appeared to deserve study by subcommittees of our Committee are as follows:

(a) Independent Regulatory Commissions; Report of the Special Subcommittee on Legislative Oversight of the Committee on Interstate and Foreign Commerce of the House of Representatives (86th Congress, 2d Session, House Report No. 2238).

(b) Study Group Report Relative to the Proposed Creation of a Department of Transportation prepared by Major General John P. Doyle for the Senate Interstate and Foreign Commerce Committee.

(c) Report to the Civil Aeronautics Board prepared by McKinsey and Company, Management Consultants, relative to operations of the Civil Aeronautics Board.

(d) Report to President Kennedy on Regulatory Agencies prepared by James M. Landis.

Each of these reports, other than the McKinsey report, deals, of course, with operations of agencies other than the Civil Aeronautics Board, but the recommendations contained in these reports, insofar as they deal with the Civil Aeronautics Board, would appear to be proper subjects for examination by the Aviation Law Committee. It is hoped that subcommittee reports dealing with each of the foregoing reports will be available for discussion by the full Aviation Law Committee during the fall of 1961, and by the Council shortly thereafter. (The activities of the subcommittee studying the proposed creation of a Department of Transportation are further discussed below.)

(2) *Subcommittee re Proposed Formation of Department of Transportation.* In the spring of 1961, at the suggestion of the Section Chairman, the Chairman of the Aviation Law Committee appointed a special subcommittee to study such bills as might be introduced in the current session of Congress relative to the formation of a Department of Transportation. The activities of this subcommittee are to be coordinated with the activities of the Section's Committee on Maritime Transportation and the Section's Committee on Interstate Commerce. It is anticipated that a report of this subcommittee will be available for consideration by the full Aviation Law Committee and by the Council prior to the August 1961 meeting thereof.

(3) *Reorganization Plan No. 3 of 1961.* On May 3, 1961, the President of the United States transmitted to the Congress of the United States Reorganization Plan No. 3 of 1961, prepared in accordance with the Reorganization Act of 1949, as amended, and providing for reorganization in the Civil Aeronautics Board. Reorganization Plan No. 3 of 1961 has now become law, unlike certain of the other Reorganization Plans with respect to federal agencies which were defeated in Congress.

As the result of action taken at the May 1961 meeting of the Council of the Administrative Law Section, the Section proposed to the Board of Governors, and received Association approval, to press for notice of, and hearings on, Agency Rules promulgated under Reorganization Plans; it is expected that the Council will submit further recommendations with respect thereto to the House of Delegates for action at the August 1961 Annual Meeting.

The Aviation Law Committee expects to participate actively in the analysis of, and hearings on, any new procedural rules which may be proposed by the Civil Aeronautics Board pursuant to the provisions of recently adopted Reorganization Plan No. 3.

RICHARD H. KEATINGE, *Chairman*

REPORT OF THE COMMITTEE ON COMMUNICATIONS

Proposed "Radio Frequency Allocation Act"

This proposed legislation has been reintroduced as H.R. 1162 in the present Congress by Congressman Oren Harris, Chairman of the House of Representatives Committee on Interstate and Foreign Commerce. This bill is the same as H.R. 8426 in the last Congress.

The Committee on Communications submitted last year a report on H.R. 8426, and recommended that it be opposed because of certain procedural deficiencies. See 12 Ad. L. Bull. 207-16. The Administrative Law Section, at its meeting in August, 1960, adopted a resolution opposing H.R. 8426 pursuant to the recommendation of the Communications Committee. See 13 Ad. L. Rev. 73.

The Council of the Section of Administrative Law, at its meeting in February, 1961, again considered this matter on an oral report from the Chairman of the Communications Committee which was based on last year's formal report on the subject. The Council thereafter recommended to the House of Delegates at its midyear meeting that such legislation be opposed. The House of Delegates adopted a resolution to this effect and authorized the Section of Administrative Law to act for the American Bar Association in opposing the enactment of such legislation. The Chairman of the Section of Administrative Law delegated this responsibility to the Communications Committee.

Accordingly, a request was made of Chairman Oren Harris that the Communications Committee be notified of any hearings by his committee as to H.R. 1162, and an opportunity be given for a representative of the American Bar Association to appear at such hearings for the purpose of explaining the reasons for the Association's opposition. Chairman Harris, in reply, expressed the hope that representatives of the Association will testify at any hearings held on this bill and other bills dealing with the question of radio frequency controls. He also commented:

> "I trust that the members of the subcommittee which studied the bill and the members of the Committee on Communications are fully conversant with the difficult problems which are pre-

sented by the divided authority with respect to frequency allocations existing under present law and the serious need for providing proper machinery for obtaining effective allocation and use of radio frequencies. Therefore, I would like to express the hope that your Association, particularly the members of the subcommittee and the committee, will restudy the issues presented by the legislation and will submit to our Committee recommendations for amendments which will cure the defects in the bill which have caused the Association to go formally on record in opposition to its enactment.

"I have no personal pride in the particulars of the bill which I have introduced. However, I feel that the problems with which the bill seeks to deal need urgent attention, and the cooperation of your Association and the members of your Committee will be greatly appreciated in making constructive suggestions for improving this legislation."

The subcommittee of the Committee on Communications which originally reported on this proposed legislation has been asked to consider the subject further in the light of Chairman Harris' comments. The chairman of this subcommittee is Ernest W. Jennes.

Developments in Procedural Aspects of Federal Regulation of Communications

A subcommittee of the Committee on Communications was established to consider Dean Landis' Report on the Regulatory Agencies insofar as it dealt with the field of communications. This subcommittee, which was headed by John H. Midlen, prepared two reports, one dated February 14, 1961, and the other dated June 19, 1961. These reports are Appendices A and B, respectively.

These two subcommittee reports have not previously been distributed to the other members of the Communications Committee. It had seemed possible that legislative developments might have crystallized in time to permit the entire Committee to consider the subject before the deadline for submission of the Committee's annual report. This has not been the case. The subcommittee's recommendations are now circulated, however, for the consideration of the Communications Committee and of the Administrative Law Section.

New "Protest" Procedure of the Federal Communications Commission

In September, 1960, Section 309 of the Communications Act of 1934, as amended, was amended to provide a new procedure for protests to applications for radio authorizations prior to a grant of such applications, in lieu of the former procedure of protests after a grant had been made by the Commission. A subcommittee of the Communications Committee, with Paul Dobin as Chairman, was established to study the rules which the Federal Communications Commission issued to implement the new protest procedure. This subcommittee reported in May, 1961, that there have been almost no decisions interpreting the new rules. The subcommittee expressed the belief that review and consideration of these problems should be postponed until there are decisions bearing upon the problems raised by the new rules.

Harold J. Cohen, *Chairman*

APPENDIX "A"

Report Concerning Landis Report on Regulatory Agencies with Counter Recommendations

I

Introductory Statement

The scope of the subcommittee of the Communications Committee of the Administrative Law Section of the American Bar Association is limited to the aspects dealing with communications matters in the Report on Regulatory Agencies, bearing date of December 21, 1960, by Dean James M. Landis. In that Report this means primarily the portions concerning the Federal Communications Commission, general agency comments relating to that regulatory body and the lack of coordination on communication aspects.

II

The Over-All Situation

In all fairness it must be pointed out that the Federal Communications Commission since its birth under the Communications Act of 1934 has had a monumental task. Regulation of the Common Carrier and Safety and Special Services Bureaus on the whole appear to have been satisfactory. In the broadcast field the radio and television systems that have evolved in this country are unsurpassed anywhere

else in the world. The over-all assessment, therefore, of the Federal Communications Commission must be—well done.

The Landis Report—insofar as it relates to communications—is a critique of shortcomings and failures of this Commission. These cited errors of omissions and commissions undoubtedly have some basis in fact—although perhaps somewhat exaggerated. It is not surprising that the Report be in this vein because it is intended as an initial step in remedial action.

The remedial action that every fair-minded and patriotic citizen desires is a body or bodies in the communications field where (1) there will be prompt and effective policy determinations and (2) the individual will receive a fair and prompt hearing before a competent and impartial tribunal having justice as its objective. The Landis Report concludes that the only patent solution for the Federal Communications Commission failings is "the incubation of vigor and courage in the Commission by giving it strong and competent leadership," together with general recommendations for (1) an internal reorganization to strengthen the administrative functions of the Chairman and (2) creation of a body in the Executive Office of the President for coordinating telecommunications matters. The subcommittee agrees to any recommendation about strengthening the leadership but believes that it would be inadvisable to shift the power from the Legislative to the Executive as contemplated by the Landis Report. It is believed a very brief discussion of the alleged problems set forth in the Landis Report would be helpful in considering this matter.

III

The Principal Problems

The Landis Report finds that evidence indicates the Federal Communications Commission has been:

1. Susceptible—more than any other agency—to ex parte presentations.
2. Subservient to congressional communications committees.
3. Influenced to a substantial extent by the networks.
4. Incapable of policy planning.
5. Unable to dispose of its business within a reasonable length of time.
6. Incapable of fashioning procedures which are effective to deal with its problems.
7. Allowing or encouraging presentation of a mass of evidence at considerable cost and of no use in the decisional process or for future regulatory purposes with substantial delays naturally associated with this mass of evidence.

Without necessarily conceding that the problems exist to the extent indicated in the Landis Report it is believed that the administrative procedures would be improved with the changes suggested in the following section.

IV

The Suggested Solutions

The specific recommendations of the subcommittee are:

1. The administrative functions of the Chairman of the Federal Communications Commission be strengthened so that greater responsibilities for the internal operations rest in that individual.

2. The tenure of the Commissioners be increased. Perhaps a term as long as 20 years would be desirable. With what would amount to a lifetime appointment for most practical purposes there would be little or no human inclination to be subject to ex parte presentations or influences from particular Congressional groups or segments of the industry if these exist to any degree at this time.

3. Increase the compensation of Commissioners to an amount which would attract members of the industry already having a familiarity with the problems in the communications field.

V

Conclusion

These recommendations are based upon the fact that this is a Government by law with men. It is believed that strengthening the agency in the manner suggested is the preferred solution rather than any shift—as proposed in the Landis Report—of power from the Legislative to the Executive branch.

APPENDIX "B"

Report on Reorganization Plan 2

I

Jurisdiction of the Subcommittee

This Subcommittee was established on January 19, 1961 to study the Report on Regulatory Agencies of December 21, 1960 by Dean James M. Landis insofar as it concerns administrative procedural matters in the communications field. On February 14, 1961 there was submitted to the Chairman of the Committee on Communications the Report of this Subcommittee on this subject.

The Subcommittee was empowered under date of April 15, 1961

by the Chairman of the Communications Committee to give such further consideration to this matter as was deemed desirable and any procedural changes adopted by the Federal Communications Commission as a result—or independently—of the Landis Report. On May 18, 1961 its scope was enlarged to consider Reorganization Plan No. 2 of 1961 for reorganization in the Federal Communications Commission.

II

Landis Report On Regulatory Agencies

The February 14, 1961 Report of this Subcommittee concerning the Landis Report has been reviewed. There are no changes to such Report.

III

Proposed Procedural Changes by the Federal Communications Commission

In February, 1961 the then Chairman of the Federal Communications Commission stated the Commission was preparing drafts of legislation for expediting hearing cases to (1) form two panels of Commissioners with appeals to the full Commission on a discretionary basis only and (2) use the Motion for Summary Judgment Procedure as utilized by the courts. The former is embodied in S. 2034 which is treated in more detail later in this Report. There has been no proposed legislation for the latter. Since issuance of the Landis Report of December 21, 1960 there have been no known procedural changes of a major degree adopted by the Federal Communications Commission.

IV

Reorganization Plan No. 2 of 1961

The limited time between referral to this Subcommittee of Reorganization Plan No. 2 of 1961 and the meeting of the Council of the Administrative Law Section on May 20-21, 1961 did not permit the holding of a meeting of this Subcommittee in that period. To ascertain the viewpoints concerning Reorganization Plan No. 2 thirteen members of the Committee on Communications located in the Washington, D. C. area (comprising nearly 50% of the Committee) were polled and all—for varying reasons—stated opposition to this Reorganization Plan. A presentation by the Chairman of this Subcommittee was made on May 20, 1961 to the Council of the Administrative Law Section outlining the objectives of the Reorganization Plan as well as its particular features and recommending to the

Administrative Law Section—if it had authority from the House of Delegates—to voice its opposition by letter or testimony before the appropriate Committees of the Senate and House of Representatives. There need be no detailed treatment of Reorganization Plan No. 2 of 1961 as it was rejected on June 15, 1961 by a 323 to 77 vote in the House of Representatives.

V

Important Pending Legislation In the Communications Field

On May 25, 1961 there was introduced H.R. 7333 in the House of Representatives and on June 7, 1961 there was introduced S. 2034 in the Senate of the United States. Both bills—overlapping in subject matter to some degree—would amend the Communications Act of 1934, as amended, and would result in major procedural changes before the Federal Communications Commission.

VI

Action Recommended

This Subcommittee recommends that:

1. The Committee on Communications or an appropriate Subcommittee of that Committee study H.R. 7333 and S. 2034 with a view to stating the position on certain aspects of these two bills.

2. The Council of the Section of Administrative Law seek from the House of Delegates a broader authority—if authority to act now exists only where a proposed administrative change impairs or contravenes the Administrative Procedure Act—to make known the position of the Section of Administrative Law on proposed legislation for administrative law changes of substantial degree without reference of the matter to the House of Delegates, Board of Governors, or Administrative Committee.

REPORT OF THE COMMITTEE ON THE FEDERAL REGISTER

1. *Prior Activity.* The work of the present Committee is based on the findings and proposals of the first Committee on the Federal Register as reported in the *Bulletin,* Spring-Summer Issue, 1960, beginning at page 221. The first Committee conducted a highly successful survey of the Section with respect to Federal Register matters. As a result of its studies the Committee concluded, among other things, that the Federal Register and the Code of Federal Regulations should not be published in loose-leaf form. As a corollary the Committee recommended the development of special loose-leaf rules services in selected areas.

2. *Program of present Committee.* The present Committee on the Federal Register undertook (1) to discover the areas in which loose-leaf services were desirable; (2) to encourage the cooperation of the agencies, the practitioners, and the Office of the Federal Register in establishing such services; and (3) to continue studies designed to improve the FR-CFR system generally.

These objectives were explained to members present at the midwinter meeting in Chicago last February, and by mail to all who had expressed special interest in Federal Register matters.

3. *Special publication of rules.* Inquiries made by the Committee revealed that virtually all agencies are now aware of the assistance offered by the Office of the Federal Register in the production of special printings of their rules. These inquiries also induced an increasing awareness on the part of practitioner groups of the possibilities in this field.

The Committee concluded that a tabulation of materials now available would be helpful to all concerned and would stimulate improvements and additions in this field. Accordingly, the following table was compiled from the best available sources:

SUPPLEMENTARY AGENCY PRINTING OF RULES

Agency	Material	Nature of Printing
Treasury Department:		
Coast Guard	Transportation of Explosives (46 CFR Parts 146-149)	Overruns of semiannual CFR supplement.
Customs Bureau	Regulations (19 CFR Ch. I)	Loose-leaf, printed by GPO from set type.
Internal Revenue Service	Regulations (26 CFR Ch. I)	Loose-leaf, printed by GPO from camera copy, using FR type.
Alcohol Tax Unit	Various regulations (26 CFR Ch. I, parts in Subchapter C)	Pamphlets, reprinted by GPO from FR type.
Secretary's Office	Weekly Treasury Decisions (including various Department documents published in FR)	Pamphlets, printed by GPO from set type.
Defense Department:		
Air Force	Air Force Procurement Instruction (32 CFR Parts 1001-1059)	Loose-leaf, printed by GPO from set type.
Army	Army Procurement Procedure (32 CFR Parts 500-610)	Loose-leaf with separately sold changes, printed by GPO from set type.
Navy	Navy Procurement Directives (not in CFR)	Loose-leaf, printed by GPO from set type.
Secretary's Office	Armed Services Procurement Regulation (32 CFR Parts 1-30)	Loose-leaf, printed by GPO from set type.
	Manual for Courts-Martial (E.O. 10020)	Book, printed by GPO from set type.
Post Office Department	Postal Manual (39 CFR Ch. I)	Loose-leaf, printed by GPO from set type.
Interior Department:		
Fish and Wildlife Service	Migratory bird regulations (50 CFR Part 6)	Pamphlet, printed by GPO from FR type.
Land Management Bureau	Various documents (43 CFR Ch. I)	Pamphlets, prepared by agency from FR pages.
Agriculture Department:		
Agricultural Conservation Program Service	Various documents (7 CFR Ch. XI)	Pamphlets, printed by GPO from FR type.

Agency	Material	Nature of Printing
Agricultural Marketing Service	Various documents (7 CFR Ch. I, IX)	Pamphlets, printed by GPO from FR type and from agency-prepared camera copy (FR pages).
Agricultural Research Service	Various documents (7 CFR Ch. III)	Pamphlets, printed by GPO from FR type.
Commodity Stabilization Service	Various documents (7 CFR Ch. VII, VIII)	Pamphlets, printed by GPO from FR type.
Commerce Department:		
Business and Defense Services Administration	Various documents (15 CFR Ch. VI)	Pamphlets, printed by GPO from FR type.
Foreign Commerce Bureau	Comprehensive Export Schedule (15 CFR Ch. III)	Loose-leaf, printed by GPO from set type.
Patent Office	Rules of Practice (37 CFR Parts 1, 2)	Pamphlets, printed by GPO from set type.
Public Roads Bureau	Various documents (23 CFR Ch. I)	Pamphlets, printed by GPO from FR type.
Labor Department:		
Employees' Compensation Bureau	Various documents (20 CFR Ch. I)	Pamphlets, printed by GPO from set type.
Secretary's Office	Labor standards contract provisions (29 CFR Part 5)	Pamphlets, printed by GPO from FR type.
	Safety and Health Regulations (29 CFR Parts 8 & 9)	Overruns of FR issues.
Wage and Hour Division	Various documents (29 CFR Ch. V)	Pamphlets, printed by GPO from FR type.
Health, Education, and Welfare Department:		
Food and Drug Administration	Regulations (21 CFR Ch. I)	Loose-leaf, printed by GPO from agency-prepared camera copy (FR pages).
Public Health Service	Biological Products List (FR notice document)	Pamphlet, printed by GPO from FR type.
	Hospital Construction Regulations (42 CFR Part 53)	Pamphlet, printed by GPO from set type.
Independent Agencies:		
Atomic Energy Commission	Regulations (10 CFR Ch. I)	Loose-leaf, printed by GPO from set type.

Agency	Material	Nature of Printing
Civil Aeronautics Board	Economic Regulations (14 CFR Ch. II, Subchapter B)	Loose-leaf, printed by GPO from set type.
	Uniform System of Accounts (14 CFR Part 241)	Loose-leaf, printed by GPO from agency-prepared camera copy (FR repros).
Civil Service Commission	Annual and Sick Leave Regulations (5 CFR Part 30)	Pamphlet, printed by GPO from set type.
	Employment in Federal service (5 CFR Ch. I)	Pamphlet, printed by GPO from set type.
	Group Health Benefits Regulations (5 CFR Part 89)	Overrun of FR issue.
	Veterans' Federal Employment Regulations (5 CFR Ch. I)	Pamphlet, printed by GPO from set type.
Federal Aviation Agency	Regulations (14 CFR Ch. I, III)	Loose-leaf, printed by GPO from set type.
Federal Communications Commission	Regulations (47 CFR Ch. I)	Loose-leaf, printed by GPO from set type.
Federal Home Loan Bank Board	Regulations (12 CFR Ch. V)	Loose-leaf, printed by GPO from agency-prepared camera copy (FR pages).
Federal Housing Administration	Regulations (24 CFR Ch. II)	Loose-leaf, printed by agency from own camera copy (FR pages).
Federal Power Commission	Preservation of Records (18 CFR Part 125)	Pamphlet, printed by GPO from set type.
	Regulations under Federal Power Act (18 CFR Ch. I, Subchapter B)	Pamphlet, printed by GPO from set type.
	Regulations under Natural Gas Act (18 CFR Ch. I, Subchapter E)	Pamphlet, printed by GPO from set type.
	Rules of practice and Procedure (18 CFR Part 1)	Pamphlet, printed by GPO from set type.
	Uniform Systems of Accounts (18 CFR Parts 101, 104, 201, 204).	Pamphlets, printed by GPO from agency-prepared camera copy (FR repros).
Federal Trade Commission	Trade Practice Rules (16 CFR Ch. I)	Compilation, printed by GPO from set type.
General Services Administration	Federal Procurement Regulations (41 CFR Ch. I)	Loose-leaf, printed by GPO from agency-prepared camera copy (FR repros).
Interstate Commerce Commission	General Rules of Practice (49 CFR Part 1)	Pamphlet, printed by GPO from set type.
Library of Congress; Copyright Office	Regulations (37 CFR Ch. II)	Pamphlet, printed by GPO from FR type.

Agency	Material	Nature of Printing
National Labor Relations Board	Regulations (29 CFR Ch. I)	Pamphlet, printed by GPO from set type.
Renegotiation Board	Regulations (32 CFR Ch. XIV)	Loose-leaf, printed by GPO from FR type.
Securities and Exchange Commission	Various Regulations (17 CFR Ch. II)	Pamphlets, printed by GPO from set type.
Selective Service System	Regulations (32 CFR Ch. XVI)	Loose-leaf, printed by GPO from set type.
Small Business Administration	Regulations (13 CFR Ch. I)	Pamphlets, printed by GPO from agency-produced camera copy (FR pages).
Tariff Commission	Rules of Practice and Procedure (not in CFR)	Pamphlet, printed by GPO from set type.
Tax Court of United States	Rules of Practice (26 CFR, Part 701)	Pamphlet, printed by GPO from set type.

Publications tabulated above generally may be obtained either from the issuing agency or from the Superintendent of Documents, Government Printing Office, Washington 25, D. C. The Committee recommends that interested parties obtain Price List 10 and Price List 36 from the Superintendent of Documents. If the desired service or pamphlet is included in a Price List, it may be purchased as indicated in the List. If the desired item does not appear on a Price List, application should be made directly to the issuing agency.

The Committee further suggests that any group of practitioners desiring new or improved rules service may enlist the assistance of this Committee at any time.

4. *General Improvement of the CFR System.* In furtherance of the Committee's studies designed to improve the CFR, the Office of the Federal Register and the Government Printing Office jointly discussed practical methods of improving the format and timeliness of the Code of Federal Regulations. Two major possibilities came to the forefront of the discussion: (1) that manufacturing time could be reduced by substituting, for the present book and pocket insert, a box to contain each basic book and current supplement; and (2) that manufacturing time could be reduced by changing the present cut-off date of revised books and cumulative supplements from January 1 to July 1 of each year.

Both of these possibilities were presented to the Council and others present at the February meeting. Response from members

present was remarkably sparse. Response from legal librarians has been voluminous and overwhelmingly against the box system. In general, the proposal to change the cut-off date received a less effusive but nonetheless cold reaction.

The Committee recommends that both possibilities be dropped for the time being, and that other means of expediting CFR publication be sought.

5. *General Recommendations.* The Committee recommends that (1) the present program of study and assistance in the field of rules publication be continued, and (2) the Section maintain close liaison in this regard with the Information and Education Committee of the United States Conference on Administrative Procedure.

DAVID C. EBERHART, *Chairman*

REPORT OF THE COMMITTEE ON HEALTH, EDUCATION AND WELFARE

A query was brought to the attention of the Chairman on the subject of maximum fee statutes and regulations on representation in Social Security administrative proceedings. The present regulation effectively denies Social Security applicants from employing legal counsel by restricting these fees to $10.00. After inquiry and discussions, the matter was referred to the General Committee on Representation Before Agencies because the problem extended to other areas of the law than those which this Committee is specifically charged.

A second question concerned the manner in which hearing examiner procedures are observed by the Department of Health, Education and Welfare. Here, too, this matter was one that was referred to the Special Committee on Hearing Examiners. The issue is the need to have the examiners selected in accordance with the Administrative Procedure Act; this is a matter which has been worked on for the past several years by the aforementioned Committee. Nevertheless, discussions on this matter were had with officials of the Civil Service Commission by the undersigned.

An official of the Office of Education raised the question of law schools engaging in correspondence courses. There was question as to the worthwhileness and validity of some of this instruction. It was suggested that this matter be brought to the attention of the Section of Legal Education and admissions to the Bar.

There is obviously more that the Committee could do in the future, particularly on the subject of procedures governing the administration of the Social Security system. Such an effort would have to be co-ordinated with other committees, including the Special Committee on Legal Services and Procedure.

ROCCO C. SICILIANO, *Chairman*

REPORT OF THE COMMITTEE ON HEARING EXAMINERS

This committee is charged with responsibility for study and research for the preservation of the gains made by the adoption of the Administrative Procedure Act with reference to the qualifications, status and function of Hearing Examiners in Federal agencies, as provided in Section 11 of the Administrative Procedure Act. The Supreme Court said, in *Universal Camera Corporation* v. *National Labor Board,* 340 U.S. 474, that "enhancement of the status and function of the Trial Examiners was one of the more important purposes of the movement for administrative reform." In that we concur.

We strongly endorse the report made by Chairman Baskette for this committee last year (see Administrative Law Bulletin, Vol. 12, Spring and Summer Issue 1960, p. 229) and also the statements made by Chairman Baskette to the subcommittee of the Committee on Government Operations of the House of Representatives, August 25, 1960, when he appeared before that Committee on behalf of the American Bar Association and expressed opposition to the method of appointment of Federal Hearing Examiners by selective certification.

As Mr. Baskette stated, there was then pending before Congress proposed legislation which, if enacted, would remove the basis of the Association's objections to the practice. The proposed legislation was S. 600 and its companion bill, H.R. 7092, known as the Federal Administrative Practice Act. Titles I and II of this proposed bill would create an office of Federal Administrative Practice, and hearing examiners would be taken from under the jurisdiction and supervision of the Civil Service Commission and placed under the direction and supervision of such office. The proposed legislation was the result of a series of resolutions adopted by the House of Delegates of the American Bar Association at its midyear meeting in February 1956. (See ABA Reports, vol. 81, p. 491, *et seq.*) The Association has recommended that these two bills be reintroduced at this session of the Congress.

The American Bar Association believes the fair and efficient hearing and impartial decision of cases of adjudication before Federal administrative agencies can be achieved only if hearing officers are afforded maximum assurance that they must and can

exercise fully independent judgment in hearing and initially deciding cases. The attainment of fair hearing and impartial decision objectives of the Administrative Procedure Act requires an unmistakably clear legislative mandate for the independent appointment, tenure and compensation of Federal Hearing officers. (See resolution adopted by House of Delegates March 9, 1954, ABA Report, Vol. 79, pp. 500-501.)

In 1957, the House of Delegates also adopted a resolution at its midyear meeting calling upon the Congress to enact legislation which would increase the pay of hearing examiners to the Grade GS-18 level. (See Reports of ABA, Vol. 82, pp. 402-403.) That would not only tend to assure the present personnel that they may exercise fully independent judgment in hearing and initially deciding cases, but it would attract the highest quality of attorneys for the office of trial examiners.

Two bills were introduced in Congress, S. 751 and H.R. 4109 to extend the life of the Indian Claims Commission. In its reports on these bills the Department of Interior recommended that they be amended to authorize the Indian Claims Commission to appoint hearing examiners, but it was not made clear whether such hearing examiners would be selected in accordance with Section 11 of the Administrative Procedure Act. The Senate approved S. 751 with such an amendment, but the House reported H.R. 4109 for the extension of the Indian Claims Commission without such an amendment, and the Senate concurred. So the bill as finally passed did not include any provision as to the appointment or use of hearing examiners.

Under date of June 5, 1961, at the suggestion of this committee, Chairman Harris addressed letters to Honorable Clinton P. Anderson, Chairman of the Committee on Interior and Insular Affairs of the United States Senate, and Honorable Wayne L. Aspinall, Chairman of the Committee on Interior and Insular Affairs of the House of Representatives, suggesting that for the purpose of uniformity, the selection and appointment of any such hearing examiners should be made in accordance with the provisions of Section 11 of the Administrative Procedure Act, and that the legislative history on this matter be made clear.

Following the election of President Kennedy, Honorable James M. Landis prepared and submitted on December 27, 1960, a report on administrative agencies to Honorable James O. Eastland, Chairman of the Senate Committee on the Judiciary. In

that report Mr. Landis reviewed many of the problems of administrative agencies and suggested several remedies. In his discussion of the problems, he stated (p. 66): "The prime key to the improvement of the administrative process is the selection of qualified personnel." In that we heartily concur, and for that reason one of the objectives of this committee is to strongly urge a procedure that would ensure the selection and qualification of the very best personnel for the position of hearing examiners, and, further, assure to the hearing examiners tenure in office and compensation that would attract men of the highest standards for that office.

Mr. Landis reviewed the intensive research and studies of the problems that have been made by various organizations such as the Hoover Commission and the Bar Association, scholars and individual practitioners, including the President's Conference on Administrative Procedure called by President Eisenhower in 1953 and conducted under the direction of Judge Prettyman of the Court of Appeals of the District of Columbia. Mr. Landis recommended that the function of qualification and grading of hearing examiners might well be transferred to a secretariat to be established in place of the present Office of Administrative Procedure. He stated that the Civil Service Commission is not fundamentally organized to handle this problem and that the extremely important goal of maintaining the independence and integrity of the hearing examiners and evolving a corps of highly qualified examiners can better be achieved through an arrangement of this character rather than leaving these problems to the Civil Service Commission.

On April 13, 1961, President Kennedy submitted to Congress a special message on the regulatory agencies of our government (107 Cong. Record 5356, H. Document No. 135; Vol. 7 U.S. Code Congressional and Administrative News, p. 1417). In that special message he pointed out the need for improvement in the overall operation of the regulatory agencies, the necessity for high quality personnel in charge of the agencies, the problem as to coordination of regulatory practices, and he recommended the adoption of plans to vest responsibility within the agencies themselves by giving broad managerial powers to the chairman of each agency. He specifically recommended one internal administrative device whereby individual agency members would be given the responsibility for the formulation of the rationale underlying important

agency decisions and its release to the public under the individual member's name, as distinguished from the practice of rendering anonymous decisions which has hitherto generally prevailed. He reviewed the improvement of administrative procedures in the past fifteen years of experience under the Administrative Procedure Act of 1946, and stated that he had issued an executive order calling at the earliest practicable date a conference to be headed by an illustrious jurist and a distinguished council of lawyers and other experts from the administrative agencies of the Government, the bar and university faculties, to consider the questions discussed in his message.

On the subject of hearing examiners, the President stated in his message:

> None of the regulatory agencies can be completely efficient and effective unless they are staffed by capable hearing examiners. The hearing examiner can relieve the agency of protracted adjudicatory processes, speed the disposition of the cases, and serve as a valuable aid in the decisional process. The importance of his position should be recognized by adequate provisions for responsibility and compensation.

The President stated that the promotion process is inexact and has led to a concentration of almost all the positions in Grade GS-15, the highest regular grade in the classification, and he recommended amendment of the Administrative Procedure Act to remove the requirement that hearing examiners receive compensation in accordance with the Classification Act, and instead provide that they receive salaries equivalent to that prescribed for a Grade GS-16 or a Grade GS-14, with an added provision that a chief hearing examiner in each agency would receive $500 per annum additional compensation.

Our committee agrees that the promotion process is inexact, but disagrees with the President's recommendation that salaries be limited to Grade GS-16 and Grade GS-14, because that is not consistent with the requirement for employment of the highest quality of personnel in all agencies. To obtain qualified attorneys of mature judgment and judicial temperament for this office it is necessary to assure them compensation commensurate with the responsibility, which would not be less than Grade GS-18. The American Bar Association has heretofore recommended that salaries of hearing examiners be uniform and fixed at a grade not

less than GS-18, and this committee knows of no reason to change that recommendation.

We recommend therefore that the Section transmit to the President, to the Honorable James O. Eastland, United States Senate, and to other interested congressional committees, for consideration with the President's Message of April 13, 1961, a copy of the resolution heretofore adopted by the House of Delegates on February 19, 1957, in which the Association urged the enactment of legislation providing for an increase in Hearing Examiner positions to Grade GS-18, together with a statement urging that favorable action be taken in accordance with the Association's resolution, copy of which is attached.

RICHARD S. DOYLE, *Chairman*

RESOLUTION OF FEBRUARY 19, 1957

(See 81 ABA Reports 402, 82 ABA Reports 402-3, 416)

WHEREAS, The American Bar Association on February 21, 1956, adopted a resolution advocating the "inclusion in S.2628 of an amendment to Section 11 of the Administrative Procedure Act which would provide that Federal Hearing Examiners shall be compensated at Grade GS-18"; and

WHEREAS, H.R. 7619, companion bill to S.2628 was enacted on July 31, 1956, as Public Law 854 (70 Stat. 736) but without including any increase in compensation for Hearing Examiner positions or related judicial positions below the level of agency members whose salaries were increased in the order of 30 per cent;

Now, Therefore, Be It Resolved, That the American Bar Association urges the enactment of legislation providing for an increase in Hearing Examiner positions to Grade GS-18 and to specify a compensation for the Judicial Officer of the Department of Agriculture at a rate of compensation equivalent to that of an Assistant Secretary of the Department of Agriculture, and that the Section of Administrative Law be authorized and directed to advance appropriate legislation for the above purposes.

REPORT OF THE COMMITTEE ON IMMIGRATION AND NATIONALITY

During the past year the Committee has devoted its efforts to the study of new legislation introduced in the 87th Congress, First Session, in which the Committee had a special interest. Because all prior pending legislation expired with the end of the 86th Congress, Second Session, there was, of necessity, a lag of activity in this area between the time that the Committee was constituted, and the time that Congress reconvened and new legislation was introduced.

The Committee has been seeking to find the necessary avenues through which there could be put into operation the ten Committee Resolutions, previously approved by the Board of Governors and/or the House of Delegates.

On April 24, 1961 the Committee was represented at a conference held with Deputy Attorney General Byron White, at which time arguments were presented to the Deputy Attorney General in favor of the following Resolution previously approved by the House of Delegates:

> "That final administrative appeals should lie to the Board of Immigration Appeals from all decisions of District Directors, Regional Commissioners and Special Inquiry Officers under the Immigration and Nationality Laws."

At the time of the submission of this report no decision had been rendered by the Deputy Attorney General on this matter.

At the same conference, arguments were also advanced against pending legislation which would substantially reduce the presently existing scope of judicial review of orders in deportation or exclusion cases, and, in this connection, the following previously approved Resolution was emphasized:

> "That judicial review of deportation and exclusion orders be governed by Section 10 of the Administrative Procedure Act and that legislation designed to restrict judicial review of such orders be opposed."

The Committee has requested the respective Committees on the Judiciary of the Senate, and of the House of Representatives, for an opportunity to be heard at any public hearings which may be conducted on S. 1809 and H.R. 6300, both of which are omni-

bus bills and which contain provisions in which this Committee has a special interest.

Subsequently, another Bill, H.R. 187, which would curtail and limit the presently existing scope of judicial review of orders of deportation and exclusion, was reported out of the Committee on the Judiciary of the House of Representatives, without public hearing, and it is expected that the Bill will come up for consideration on the House Consent Calendar on July 10, 1961. In the event that this Bill is approved by the House, the Committee intends to request the Senate Committee on the Judiciary to hold public hearings on the legislation, and to afford this Committee an opportunity to present the views of the Association.

Beginning with April 29, 1961, the Committee, together with the Federal Bar Association and the Association of Immigration and Nationality Lawyers, sponsored a three day conference in Atlantic City, New Jersey, on Immigration and Naturalization problems. During that conference, the Chairman of your Committee acted as Moderator of a panel discussion on First Preference Priorities, in which the participants were Frank L. Auerbach, Assistant Director of the Visa Office of the United States Department of State, James L. Hennessy, Executive Assistant to the Commissioner, United States Immigration and Naturalization Service, and Abraham Kaufman, member of the New York Bar, and a member of the Administrative Law Section of the ABA.

Although legislative progress in the field of immigration and nationality is slow and of a non-priority nature, the Committee is confident that in the future many of its previously adopted Resolutions will be enacted into law.

EDWARD L. DUBROFF, *Chairman*

REPORT OF THE COMMITTEE ON INDIAN MATTERS

Again this year the activity of the Committee and its members has served a useful purpose in lending the expertise of interested members of the section to the clarification of issues and problems affecting Indian matters in the field of administrative law. In some instances the Committee has worked in coordination with other Committees of the Section and with the Chairman for the purpose of improving administrative practice, in others individual members of the Committee have taken affirmative action, perhaps suggested by inter-change of ideas and communications among committee members, to assist in improving administrative law in the specialized field of Indian matters.

1. *Indian Claims Commission Hearing Examiners*

The Indian Claims Commission was created by Congress in 1946 to hear and determine Indian tribal claims against the United States which had theretofore, because of the doctrine of sovereign immunity, been impossible of adjudication in the courts (60 Stat. 1049, 25 U.S.C. § 70a, *et seq.*).

In the past, authorities in administrative law have concluded that the Indian Claims Commission is an agency subject to the Administrative Procedure Act. Such was the view of one of the most eminent authorities, Judge E. Barrett Prettyman, in his "Trial by Agency" (The Virginia Law Review Association, Charlottesville, 1959, p. 4). Nevertheless, heretofore members of that Commission have taken the position that it was not subject to the requirements of that act, so far as hearing examiners are concerned, because the agency was purely "judicial in function." Recently this position was highlighted by action of the Commission in appointing two lawyers on its staff to hold hearings. These lawyers were on the register of hearing examiners and experienced in the specialized field. However, their designation to hold the hearings was as members of the staff of the Commission and without regard to procedures consistent with the APA.

In the present Congress (87th, 1st Sess.) legislation was enacted to extend the term of the Indian Claims Commission. Public Law 87-48, approved June 16, 1961. When the legislation was being considered by the Senate and House Committees on Interior

and Insular Affairs, the Assistant Secretary of the Interior proposed an amendment to the Act to enable the Commission to appoint hearing examiners. The recommendation was that the act be amended by inserting after "such other employees" the phrase "including Hearing Examiners" in the following existing Section 4:

> "The Commission shall appoint a clerk and such other employees as shall be requisite to conduct the business of the Commission. All such employees shall take oath for the faithful discharge of their duties and shall be under the direction of the Commission in the performance thereof."

The recommendation of the Assistant Secretary of the Interior was adopted by the Senate. (See S. Rept. 208, 87th Cong., 1st Sess., p. 2). The subject of hearing examiners in the Commission had been of concern to the section previously. In 1954, the section opposed selection of hearing examiners without regard to the APA. In the present instance, while the Committee Chairman and members involved did not question the desirability of using qualified hearing examiners to speed up the work of the Commission, they did again question the appointment of the Hearing Officers without regard to the requirements and benefits of the APA. There was no legislative record to clarify whether or not the examiners must be appointed under the provisions of that act. Accordingly, the Committee alerted the Committee on Hearing Examiners and collaborated with the officers of that Committee (Richard S. Doyle, Esq., Chairman) in drafting a proposed letter to the Chairmen of the Senate and House Committees for transmittal by the Section Chairman.

The letter which was sent on June 5, 1961, by Chairman Whitney R. Harris to Senator Clinton P. Anderson and Congressman Wayne N. Aspinall urged:

> "For purposes of uniformity in the selection of hearing examiners, as intended by Congress in its adoption of the Administrative Procedure Act, it is urged that the legislative history on this matter be made clear, so that hearing examiners selected for the Indian Claims Commission are appointed in accordance with the provisions of Section 11 of the Administrative Procedure Act."

The letter proposed an express amendment, stating:

> "This amendment will further the declared policy of the Congress to insure the independence of hearing examiners as contemplated by passage of the Administrative Procedure Act."

For various reasons, the House did not adopt the hearing examiner provision. The Conference adopted the House version and the act was extended without any provision dealing expressly with hearing examiners.

2. *Practice of the Department of the Interior with respect to service of process or its equivalent upon individual Indians or Indian tribes in protests, contests, and appeals arising out of decisions of the Bureau of Indian Affairs, Bureau of Land Management and other Bureaus of the Department*

In the past the Committee and its members have been very interested in developments within the Department of the Interior to adopt rules for handling appeals. A number of the members of the Committee filed comments on the proposed rules for handling appeals within the Bureau of Indian Affairs, promulgated in the Federal Register of November 28, 1959. On September 21, 1960, the Bureau of Indian Affairs announced new regulations governing appeals from administrative decisions by the Bureau of Indian Affairs and the proposed rules were promulgated in the Federal Register of September 22, 1960, pages 9106-9109. The rules are quite simple and contribute much to the improvement of procedure before the Department, even though they do not deal with many areas treated in comments by informed interested parties.

In announcing the rules, the Secretary of the Interior explained that the procedure "applies only to decisions or actions by the Indian Bureau officers which are claimed to violate a person's legal rights or privileges." It does not cover the handling of complaints which are "merely directed against the legal or administrative correctness of such decisions or actions." An appeal may be filed on behalf of any person who believes that his legal rights or privileges have been violated. No degree of formality is required, a simple letter will suffice, and the appellant need not be represented by counsel. Three levels of appeals are provided: (1) Appeals to area directors from decisions of officials under them, (2) appeals to the Commissioner of Indian Affairs of decisions of the area directors, and (3) appeals to the Secretary from decisions of the Commissioner. Appeals must be noted within 20 days of mailing of the notice of decision and generally are to be filed with the official making the decision. The regulations provide that no appeal shall be dismissed because of a procedural error or informality which is satisfactorily explained as the result of

ignorance, mistake or circumstances beyond the control of the appellant.

One of the great needs in practice before the Department of the Interior is for proper notification of attorneys for Indian tribes and individual Indians where applications and proceedings are before the Bureau of Land Management or the Geological Survey and affect the rights of the Indian tribes or individual Indians. For example, determinations of rights under certain oil and gas leases between oil companies and Indian tribes have been made by Geological Survey without notice to the Indian tribes affected. This area should command continued study by the Committee and the Department.

3. *Supervision of Attorneys Contracts by Solicitor's Office, Department of the Interior*

In recent years there has been added to the already staggering duties of the personnel of the Solicitor's office the duty of supervising and approving contracts of employment between Indian tribes and attorneys. This responsibility involves many details and considerable paper work dealing with problems of the tribes and their lawyers and essential to effective and timely advice of counsel.

Because so many tribes and their lawyers have been affected by delays in this area, members of the Committee have given much thought to methods of improving procedures. It has been suggested certain layers of review could be eliminated (now handled at (1) agency, (2) Area Office, (3) Bureau, and (4) several officials in Solicitor's office). The Solicitor's Office and the Bureau of Indian Affairs have been studying the matter and there have been made certain proposals, including the possibility of delegation of the responsibility to area solicitors. No decision has been made.

The Committee has offered to create a subcommittee to meet with the Solicitor of the Department to assist in any way possible on this matter. The Solicitor has indicated his desire to meet with that subcommittee, which will probably accept his invitation in the near future. Improvements in this vital area will constitute a major contribution to administrative practice.

4. *Projects for Next Year*

There are numerous projects for study and activity within the next year. The committee must, of necessity, be selective. The

following should have careful consideration in arriving at goals for the next year:

a. Improvement of practice for notice to affected parties in proceedings before the Department of the Interior and its bureaus and offices.

b. Development of rules and regulations pertaining to enrollment and disenrollment of individual Indians in tribal organizations and appeals therefrom.

c. Inquiry into the administrative practice of Indian probate examiners, including the question of the application of the APA to those proceedings in the Bureau of Indian Affairs and the positions of the Indian probate examiners.

d. Methods to facilitate proceedings before the Indian Claims Commission, including effective use of pretrial conferences and procedures.

The cooperation of the members in the work of the Committee has been greatly appreciated.

ROBERT W. BARKER, *Chairman*

REPORT OF THE COMMITTEE ON INTERSTATE COMMERCE

The Committee on Interstate Commerce has had a very busy and productive year. The highlights follow:

Chairmanship of the Interstate Commerce Commission

In his report on regulatory agencies dated December 21, 1960, made to then President-elect Kennedy, Mr. James M. Landis recommended that the chairman of the Interstate Commerce Commission "be appointed to that office by the President and hold it at his pleasure." See page 37 of the so-called Landis Report (Committee Print, December 1960, of the Senate Committee on the Judiciary). Subsequently the President of the United States, in his Special Message to the Congress on Regulatory Agencies, April 13, 1961, stated that "* * * the chairman [of the Interstate Commerce Commission] should be responsible to the President and serve as chairman at his pleasure * * *." See House Document No. 135, 87th Congress, page 5.

A majority of the Committee on Interstate Commerce is opposed to Mr. Landis' recommendation and the President's suggestion in this regard and, since there have been indications that efforts to implement it will be made, it is therefore recommended that the Section of Administrative Law adopt the following proposed resolution for submission to the House of Delegates:

Resolution

Resolved, That the Section of Administrative Law recommends that the House of Delegates adopt the following resolution:

"Whereas, The suggestion has been made that the chairman of the Interstate Commerce Commission should be appointed to that office by the President of the United States and hold it at his pleasure; and,

"Whereas, It is believed that if the chairman of the said Commission were so to be appointed by and hold office at the pleasure of the President the independence of the Commission would be undermined and it would inevitably be subjected to undesirable political pressures from which it has heretofore been free:

"Now, Therefore, Be It Resolved, That the American Bar Association opposes the suggestion that the chairman of the Inter-

state Commerce Commission be appointed by, and hold that office at the pleasure of, the President of the United States; and,

"*Be It Resolved Further,* That the Section of Administrative Law be, and hereby is, authorized to act for and in behalf of the Association in taking all appropriate steps to oppose the suggestion aforesaid."

Congressional Committee Review of Administrative Regulations

At the 1960 Annual Meeting of the Section the following resolution was adopted on recommendation of the Committee on Interstate Commerce (see the minutes of that meeting, 13 Ad. Law Rev. 78):

Resolved, That the Section of Administrative Law recommends that the House of Delegates adopt the following resolution:

"Whereas, H.R. 11411 (86th Congress) would amend the Legislative Reorganization Act of 1946 to require the submission of administrative regulations for review by committees of Congress as a prerequisite to their promulgation;

"*Now, Therefore, Be It Resolved,* That the American Bar Association opposes enactment of H.R. 11411 (86th Congress) or any other similar legislation calling for or requiring Congressional review of the administrative regulations of federal administrative agencies as a prerequisite to their promulgation.

"*Resolved Further,* That the Section of Administrative Law be and is hereby authorized to act for and on behalf of the Association in opposing such legislation."

The Committee was directed to furnish a draft of supporting reasons for adoption of the resolution by the House of Delegates.

Such a statement of supporting reasons was prepared and furnished, as follows (the bill referred to in the original resolution, H.R. 11411, having meanwhile been superseded by H.R. 6784, 87th Congress):

Statement of Supporting Reasons

H.R. 6784 (87th Congress) would provide that before any proposed rule or regulation having the effect or import of legislative action to carry out the purposes of an Act of Congress shall be issued by any governmental agency exercising authority conferred thereunder, other than intraagency administrative rules governing the conduct of its activities, or inter-agency rules governing relations with other agencies of the Government, a draft shall be sub-

mitted to the President of the Senate and the Speaker of the House; that the draft shall be assigned to the committee in each body which considered the original Act authorizing the issuance of the proposed rule or regulation; that the proposed rule or regulation may be approved or disapproved by either the authorized committee of the Senate or of the House, or a duly authorized subcommittee of either; that in the absence of action by either committee approving or disapproving such regulation or rule, it may go into effect not earlier than the fifteenth day following the date of receipt of the draft by the President of the Senate and the Speaker of the House; that if sooner approved by either committee it may go into effect immediately; that disapproval by either committee shall suspend its issuance, provided, that in the event of conflicting committee actions the earlier action shall govern, or different action may be agreed upon in conference by the two committees.

It would further provide that for the purposes of the Act, the committee or subcommittees required to review proposed administrative regulations or rules, may sit and act during recess and adjournment of Congress.

Desirable as it is that the Congress and its appropriate committees oversee diligently and without impediment all of the activities (including rule-making) of the administrative agencies it has created, and important as it is that the Congress and its appropriate committees be and remain free to take prompt remedial action whenever agency rule-making violates the spirit, letter, intent or purpose of the Act under which agency rules and regulations are made or is an abuse of or in excess of the powers granted by the Congress, it nevertheless seems clear that enactment of legislation of the character of H.R. 6784 (87th Congress) would be disruptive of the federal administrative process.

Enactment of such legislation could not help but serve in large degree to thwart one of the very purposes for which administrative agencies are created by unduly and unnecessarily circumscribing and delaying them in the exercise of their delegated rule-making powers. Such legislation would not only encumber and delay the administrative process but would also inevitably lead to a weakening of the desirable independence of administrative agencies. Further, it would likely lead to *ex parte* representations and the exercise of political pressures at the level of Congressional committee review—in proceedings or processes which ought to be free of such influences.

The regulatory authority of the federal agencies would be seriously impaired. Such legislation as that proposed might well, in

many cases, open the door for two separate rule-making proceedings with respect to a given rule or regulation—one before the agency and one before the Congress—with the agency in the position of having to defend and justify its position before a committee or subcommittee of the Congress prior to the effectiveness of the proposed rule or regulation. (It is assumed, although the proposed legislation would give no assurance on the point, that the agencies and others interested would be afforded opportunity to be heard by the committee or subcommittee to which the draft of proposed rule or regulation would be assigned for study.)

The effect upon a regulatory agency of having to defend and justify proposed rules and regulations as being in conformity with the spirit, letter, intent and purpose of the Act under which it is proposed to proceed, and to demonstrate that no unusual or unexpected use of the powers therein granted is involved, would be so substantial and potentially detrimental as to bring the agency's regulatory activities to a virtual standstill in important areas of function. The loss of effective regulatory authority in vital areas would, of course, seriously hamper the agency's effectiveness.

Finally, there is a possible constitutional point. *Quare* whether a statute of the kind proposed, permitting a subcommittee or committee of the Congress to "veto" an otherwise valid exercise of agency rule-making power, granted through an Act of Congress duly enacted by the Senate and the House of Representatives and approved by the President, is constitutional? See Ginnane, *The Control of Federal Administration by Congressional Resolutions and Committees,* 66 Harv. Law Rev. 569 (1953); Schwartz, *Legislative Control of Administrative Rules and Regulations: The American Experience,* 30 N.Y.U. Law Rev. 1031 (1955); Davis, *Administrative Law,* sec. 6.08.

Legislation and Other Routine Matters

From time to time throughout the year bills introduced and pending in the Congress that were thought to be of particular interest to the Committee on Interstate Commerce were circulated to the membership for comment. The response was gratifying and worthwhile but Committee consideration developed no groundswell of opinion that would justify recommendation that any particular measure be supported or opposed by the American Bar Association.

The attention of other committees of the Section was invited to certain bills thought to be important but also thought to be more appropriate for consideration by such other committees.

One example was H.R. 820 (87th Congress), a bill introduced by Congressman Multer to amend the Administrative Procedure Act so as to provide, among other things, that "no determination by any official, agency, department, bureau, or commission of the United States, involving the exercise of judgment or discretion shall be made except after a public hearing on notice to the party or parties involved indicating precisely the objections, if any, to granting or approving the application."

Numerous matters of other routine business also engaged the attention of the Committee from time to time during the year.

Organization and Procedures of the Interstate Commerce Commission

Here lay the principal and most significant activity of the Committee during the year.

In the latter part of 1960 a subcommittee under the chairmanship of Reagan Sayers was appointed to study, analyze and report to the full Committee with respect to a number of current reports, surveys and studies, including among others the report of the Interstate Commerce Commission's Special Advisory Committee on Interstate Commerce Commission Practices and Procedures captioned "Report on Commission's Organization and Internal Procedure," October 1, 1960; the report on "Organization and Procedures Survey of the Interstate Commerce Commission," November 1, 1960, prepared by Booz, Allen and Hamilton at the instance of the Bureau of the Budget; and the "Report on Regulatory Agencies to the President-elect," the so-called Landis Report, December 21, 1960 (Committee Print, December 1960, Senate Committee on the Judiciary), insofar as germane to the general jurisdictional scope of the Committee on Interstate Commerce.

This subcommittee completed its lengthy and difficult assignment in time for its report to be presented as information at the 1961 Midyear Meeting of the Council of the Section. It was subsequently published in the *Administrative Law Review* under the title "Observations on the Organization and Procedures Survey of the ICC: A Subcommittee Report" (13 Ad. Law Rev. 183).

All members of the full Committee on Interstate Commerce were then asked to consider the report of the subcommittee, to advise as to their endorsement of it and whether they were willing to have it stand as the report of the full Committee.

Most of those who replied were agreeable, in general, to having the Committee on Interstate Commerce endorse and adopt the subcommittee report. A certain amount of controversy did develop, however, on specific points. See, in that connection, the following comments received from Messrs. Richard M. Freeman, Robert W. Ginnane, Leonard J. Kassel and Walter D. Matson.

Mr. Freeman stated:

> As to recommendation (1), I prefer that the committee not go on record in favor of a Chairman, selected by the Commission, which is implied in that recommendation. I appreciate that the subcommittee limited its scope to recommendations not requiring legislation and that only the Commission is now authorized to select its Chairman. I hope that recommendation can be rephrased to endorse a policy of non-rotation without closing the door to a later recommendation of a change in legislation to authorize the President to appoint the Chairman.
>
> Your letter also requests our views as to the Case bill, S867. I am in favor of the purpose of that bill; that is, the establishment of a Department of Transportation.

Mr. Ginnane objected explicitly to several of the subcommittee's recommendations. The ICC's General Counsel wrote:

> Pages 19 and 20 of the report contain the following recommendations:
>
> (6) A reorganization should be made as to the intermediate review by non-hearing officers with anonymous recommendations made by such non-hearing officers to the Commission. In lieu thereof, individual Commissioners should have responsibility for and sign their own decisions, assisted by lawyers permanently assigned to their staffs. At no time should reports and recommendations of Hearing Examiners be reviewed by employees of lower status and less experience.
>
> (7) The present format and style of the Commission's reports are of little value as precedents. Too much space and time are taken up in recitation of the facts and contentions of the parties. Too little attention is given to the basic and underlying rationalization in reaching a statutory criteria.
>
> (8) The procedure of making determinations by notation voting, or constructive sessions, as distinguished from dispositions of proceedings in conference, should be dispensed with, whether the determination be by the entire Commission, a division of the Commission, or an employee Board. The responsibility for handling every such proceeding before a conference of

Commissioners should be assigned to an individual Commissioner, and the responsibility for handling before an employee Board should be on an individual member of the Board.

(9) The major issues of general transportation policy should be determined through ex parte proceedings or other rule making proceedings rather than in ad hoc adjudicatory proceedings. At present, many policy determinations affecting carriers and the public generally are made in what otherwise appear as relatively unimportant adjudicatory proceedings without prior notice given of the fact that policy issues are involved.

I strongly urge that these sweeping generalizations, completely unsupported by analysis, should not be adopted or approved by the Committee on Interstate Commerce. For example, paragraph 7 contains the denunciatory statement that "the present format and style of the Commission's reports are of little value as precedents." While I believe that many of the Commission's reports could be improved, I submit that the quoted statement is a gross exaggeration.

Again, it is stated in paragraph 9 of the report that "The major issues of general transportation policy should be determined through ex parte proceedings or other rule making proceedings rather than in ad hoc adjudicatory proceedings." This is an appealing generalization which appears in various recent studies of regulatory procedure. I submit that it should not be repeated by this Committee with specific reference to the Interstate Commerce Commission in the absence of some study and analysis which would at least set forth some plausible examples of areas in which such an approach might be taken usefully.

Finally, paragraph 8 of the report states that "the procedure of making determinations by notation voting, or constructive sessions, as distinguished from dispositions of proceedings in conference, should be dispensed with, * * * ." I respectfully submit that the Committee on Interstate Commerce would be acting irresponsibly in purporting to condemn notation voting without the slightest analysis of that procedure, without consideration of the necessity for it, and without information as to the extent to which notation voting is used by other administrative agencies and by the courts.

In addition, I submit that the members of the Committee on Interstate Commerce should not be asked to consider this proposal except with knowledge of recent litigation in which there was an unsuccessful challenge to the validity of notation voting, as well as to the validity of the internal procedures criticized in paragraph 6 of the report. These aspects of the Commission's pro-

cedure were sustained in *T.S.C. Motor Freight Lines, Inc. and Herrin Transportation Co., Inc.* v. *United States,* 186 F. Supp. 777 (S.D. Texas, 1960).

For the foregoing reasons, I recommend that the Committee on Interstate Commerce reject recommendations 6, 7, 8, and 9 in the Subcommittee report. If the report is adopted in its present form, I respectfully request that this letter be attached as my separate statement.

Mr. Kassel suggested that the Committee substitute for recommendation (4) the following:

(4) Hearing Examiners should be accorded full status as required by law. They should not function as attorney-advisers. They should not function as draftsmen of decisions of the Commission or Divisions thereof. They should not serve on the staffs of Commissioners. They should handle all phases of the proceedings assigned to them from the inception of the assignment until service of their initial decisions, subject to appropriate interlocutory appeals by the parties to the Commission. Omission of a Hearing Examiner's initial decision is appropriate when it is found *"upon the record"* that "due and timely execution of its [agency] functions imperatively and unavoidably so requires." Section 8(a), Administrative Procedure Act. There is no authority for omission of the Hearing Examiner's decision by a general rule, which is not found "upon the record," and which is issued in advance of the making of the record. The present grade 15 of Hearing Examiners should be increased in accordance with the recommendations and action of the House of Delegates.

Mr. Matson observed: My comments which follow with respect to Recommendations Nos. 6, 7 and 8 do not detract from my general agreement with the report.

May I suggest that the last sentence in Recommendation No. 6 be revised to read:

> The reports and recommendations of Hearing Examiners should not be subject to review by employees of lower status.

In this connection I think the phrase "and less experience" in the present recommendation is superfluous and that any rule which would make length of experience the test of whether an employee should review a particular Hearing Examiner's report would place undue emphasis on seniority.

Recommendation No. 7, which in its present form consists of three sentences validly critical of the Commission's reports, should be recast in the form of a recommendation. The following is suggested:

In order to increase the precedental value of the Commission's reports, less space should be taken up in recitation of the facts and contentions of the parties and greater attention should be given to the basic and underlying rationalization in reaching statutory criteria.

My next suggestion is related to Recommendation No. 8, which would require conference voting instead of notation voting, although if desired it could be made the subject of an additional recommendation.

I am somewhat concerned as to the validity of orders which purport to be issued by a division of the Commission but which are based on reports which carry at the end the statement "Commissioner ———— did not participate." While it is true that Section 17(3) states "A majority of the Commission, of a division, or of a board shall constitute a quorum for the transaction of business," I cannot believe it to be the Congressional intent that division action should be deemed complete when the notation vote of two members is received and the third member does absolutely nothing, for such a practice regularly indulged would defeat the requirement of Section 17(1) that a division shall "consist of not less than three members." For reasons analogous to those stated in *Ayrshire Corp* v. *United States,* 331 U.S. 132, 137-139, I think that all three members of a division should participate and advise with each other in the disposition of any division matter.

So far as I have been able to discover, the validity of a division order on which only two members voted has not been judicially tested; but that is understandable since in any case of judicial review the defect would likely have been cured before the aggrieved party had exhausted his administrative remedy. However, with the increased use of employee boards and provision for administrative finality to division action, there will be a multitude of division orders ripe for judicial review; and it will be increasingly important that division orders reflect the combined judgment of all three members of the division.

Inasmuch as Section 17 (2) requires an employee board "to be composed of three or more eligible employees of the Commission," it would also seem desirable that this requirement be not defeated by a practice wherein board action is deemed complete when the notation vote of two members is registered.

If the Committee shares my views, the following could be inserted as an addition to Recommendation No. 8 or as a separate recommendation:

Although Section 17(3) of the Act provides that "A majority * * * of a division, or of a board shall constitute a quorum for the transaction of business," paragraphs (1) and (2) of Section 17

require divisions and employee boards to consist of not less than three members. These requirements should not be defeated by the failure of a member to participate in a matter and, accordingly, no final action should be taken by a division or an employee board without the participation of the designated three members or their alternates.

Most, if not all, of the points raised in three of the above letters presented no particular problem and were satisfactorily resolved without difficulty. See, in that regard, the following letter addressed to the chairman of the Committee by Mr. Sayers under date of May 1, 1961:

> With reference to the specific suggestions made pertaining to the subcommittee report, I have the following comments:
>
> (1) I am entirely agreeable to the last sentence in Recommendation No. 6 being revised so as to read:
>
> "The reports and recommendations of Hearing Examiners should not be subject to review by employees of lower status."
>
> (2) It was my intention that Recommendation No. 7 should be critical of the Commission's reports, and this was intended. If the recommendation should be recast in the form of a recommendation without intended criticism, the Matson suggestion is well taken. I have no objection to the recasting of Recommendation No. 7 to read:
>
> "In order to increase the precedental value of the Commission's reports, less space should be taken up in recitation of the fact and contention of the parties and greater attention should be given to the basic and underlying rationalization in reaching statutory criteria."
>
> (3) The Matson suggestion relative to the amendment of Recommendation No. 8 relates to suggested legislative action, and is beyond the purview of this report.
>
> (4) The Kassel recommendation respecting Recommendation No. 4 is well considered. In my opinion, the thought expressed by Examiner Kassel is embraced in very general language in the present Recommendation No. 4. However, it undertakes to specify, rather than generalize, and therefore is delimiting. If it is to be so delimited, there are numerous other specifications that should be placed in such recommendation, and which would lengthen it beyond reason. Under the circumstances, I do not believe that the Committee should accept this suggestion. This conclusion is reached by me without any disagreement with Examiner Kassel, but in an effort to arrive at proper language for submission by the Committee to the Section and by the Section to the House of Delegates.

(5) I cannot reach accord with the Freeman suggestion relative to Recommendation No. 1, inasmuch as the scope of the report is a consideration of the practices and procedures of the Commission within the framework of the present Act; this report is not intended to consider the advisability or inadvisability of legislation vesting in the President power to appoint the Chairman of the Commission.

It was not possible to deal so easily, however, with the problems that grew out of Mr. Ginnane's letter of May 5, 1961, above. The chairman of the Committee was of the view that further study must be given to the issues raised by Mr. Ginnane before the Committee mgiht properly report its views with respect to them.

For now, then, the report of the full Committee on this subject is: The Committee on Interstate Commerce endorses, approves and adopts as its own the report of its subcommittee on "Interstate Commerce Commission Organization and Procedures," revised in the particulars set forth in the above letter written by Mr. Sayers under date of May 1, 1961, except for the matters mentioned in the letter written by Mr. Ginnane under date of May 5, 1961.

The matters reserved for further consideration, therefore, are those dealt with in recommendations numbered (6), (7), (8) and (9) of the subcommittee's report. These items deal with certain aspects of:

(6) Intermediate review;
(7) Format and style of reports;
(8) Notation voting; and
(9) Character of proceedings involving determination of major issues.

An *ad hoc* subcommittee (again chaired by Mr. Sayers) has been appointed to pursue further the study of these troublesome problems. As of this writing that subcommittee (the other members of which are Messrs. Richard M. Freeman, Robert W. Ginnane, Frank B. Hand, Jr., and Walter D. Matson) is diligently engaged in the performance of its assignment.

HARRY J. BREITHAUPT, JR., *Chairman*

REPORT OF THE COMMITTEE ON JUDICIAL REVIEW

During the current year the work of the Committee on Judicial Review has been carried on in three specific areas.

Ernest W. Jennes, of Washington, D.C., Vice-Chairman of the Committee, served as Chairman of a subcommittee which has been studying problems presented by the dual procedures for appeal under the Federal Communications Act. J. Roger Wollenberg of Washington, D.C. was Vice-Chairman of this subcommittee. In its extensive report the subcommittee has presented a thorough analysis of the appeal provisions of the Federal Communications Act, which will be separately submitted to the Chairman of the Section and will be available for distribution to the Section membership at St. Louis at the Annual Meeting in August.

The heart of this subcommittee report, embodied in its "Summary" and "Conclusions" at pages 27-34, is as follows:

Summary

From the legislative history discussed above, it can be seen that the dual method of appeal in radio cases originated in 1927, was reintroduced in 1934, and continued in 1952. On each occasion, an unquestioned assumption was made as to the desirable general statutory scheme for appeals and an exception was made for certain classes of appeals in radio cases.

Thus, in 1927, it was assumed that, generally, appeals in radio cases should be taken to the Court of Appeals for the District of Columbia. At the time, this assumption was not questioned. An exception to the general rule was made, however, for cases in which the Commission itself initiated the action from which the appeal was being taken. It was urged that in such cases an unfair burden, would be placed on the appellant if he were compelled to go to Washington to prosecute his appeal.

In 1930, radio appeals were, for the first and last time, concentrated in one court. Little indication is given in the legislative history as to the reasons for this amendment, but it would seem that all other considerations had given way to the compelling need to assure that some sort of judicial review would be available for radio cases.

In 1934, the assumption was made, and again not questioned, that generally appeals from orders of the Commission should be taken under the three-judge court procedure of the Expediting

Act of 1913 which had hitherto applied only to appeals from orders concerning communications by wire. An exception to this general rule was again urged for certain classes of radio appeals. The 'burden' argument was again used to justify a dual appeal provision. It was also argued that some concentration of appeals in the Court of Appeals for the District of Columbia was necessary to ensure review of negative orders in radio cases. In addition, arguments were made that it is advantageous to have radio appeals centered in one court. The development since 1930 of an orderly and consistent body of radio jurisprudence by the Court of Appeals for the District of Columbia was pointed to as a desirable result of the concentration of appeals in that court. Hence the exception was made.

The 1952 amendments of the dual appeal provisions were principally concerned with the clarification of the boundaries between the two appeal sections. Hence, all 'radio-licensing' cases were included under Section 402(b). In support of this, the arguments in favor of review by one court of such cases were again made. In addition, it was stated that the litigation of radio appeals all over the country would place an impossible administrative burden upon the Commission. Mr. Charles R. Denny, Chairman of the Federal Communications Commission, was the only person who suggested that the dual method of review be abolished.

Conclusions

It seems that there are three realistically possible approaches for review of actions of the Commission. They are as follows:

a. The present approach under which the Court of Appeals for the District of Columbia has exclusive jurisdiction to review certain actions of the Commission and has concurrent jurisdiction, along with other courts of appeals, to review other actions of the Commission (dual appeal).

b. An approach under which the Court of Appeals for the District of Columbia would retain jurisdiction, and jurisdiction would be given to other courts of appeals, to review *all* reviewable actions of the Commission (concurrent appeal).

c. An approach under which the Court of Appeals for the District of Columbia would have exclusive jurisdiction to review *all* reviewable actions of the Commission (exclusive appeal).

It should be noted that under all of the above approaches the Court of Appeals for the District of Columbia would retain at least concurrent jurisdiction to review any reviewable action of

the Commission. It is, of course, possible to adopt an approach under which all or some reviewable actions may be reviewed only in the judicial circuit in which appellant resides, does business, has its principal office, etc. Since during the course of our review of the legislative history of the Communications Act and our consideration of this matter no strong reason was evident for not retaining at least the concurrent jurisdiction of the Court of Appeals for the District of Columbia, this approach is not listed above. This should not, of course, preclude consideration of this approach.

In considering the approaches listed above, the following, not necessarily in the order of their importance, are factors which have been distilled from the legislative history or otherwise seem relevant to a consideration of which of the above approaches should be recommended:

1. The desirability of being able to determine, prior to adjudication, in which court or courts an action for review of a specific Commission order may be instituted. It seems that under the present dual appeal approach attorneys sometimes are not able to make the above determination. This factor seems to look most strongly toward adoption of the exclusive jurisdiction approach, under which consideration of both the specific action review of which is sought and whether venue is proper would not be necessary, and less strongly toward adoption of the concurrent jurisdiction approach, under which proper venue would still have to be considered, or toward a refinement of the present dual appeal provision.

2. The desirability of minimizing the financial burden on private parties when an appeal is taken. In this connection it seems relevant to consider whether there is or would be an increased burden if some or all orders were made reviewable exclusively in the Court of Appeals for the District of Columbia. If there is or would be such an increased burden, this factor would look toward the concurrent jurisdiction approach.

3. The desirability of minimizing the administrative burden on the Commission when appeals are litigated. This factor looks toward adoption of the exclusive jurisdiction approach.

4. If the negative order doctrine, under which courts set up by Congress under Article III of the Constitution may not constitutionally review Commission orders denying applications for communications facilities, has some present validity, this doctrine would bar the recommendation of exclusive jurisdiction. It is believed, however, that this doctrine has been repudiated and need not be considered further.

5. In order to facilitate the development of an orderly and consistent body of communications law, it seems that the exclusive jurisdiction approach would be most fruitful. On the other hand, it should be carefully considered whether a practice which permits divergent and inconsistent decisions by different courts of appeals, with an ultimate resolution of the conflict by the Supreme Court, is a virtue or defect of our judicial system. To the extent that the uncertainty that results is the necessary price that must be paid for the increased chance of obtaining a 'correct' decision, the concurrent jurisdiction approach may be beneficial.

6. If it is desirable to have often technical and complex issues of communications law determined by judges knowledgeable in this field, this would look toward the exclusive jurisdiction approach. On the other hand, it seems that one reason for judicial review of agency action is the desirability of not letting an expert body have the final word on matters within its expertise, but rather letting non-experts make the final determination. It should be further considered whether this latter point is not ameliorated to some extent even under an exclusive jurisdiction approach, for discretionary review by the Supreme Court would still be available.

7. One of the most serious problems presented by the existing dual appeal provision is the uncertainty in a number of situations as to whether Section 402(a) or Section 402(b) applies. In such situations lawyers must either elect to appeal under one of the two subsections and face the risk of dismissal of the appeal or elect to file two separate appeals, with the recognition that one will be dismissed. If the latter course is followed, an unnecessary burden is placed both upon the lawyer and upon the court. Of course, if the appeal is filed in any court of appeals other than the District of Columbia circuit, the second choice is not available as a practical matter, indeed if it is as a legal matter. The only way of solving this problem under the present dual appeal approach is by an amendment to Section 402 which would remove uncertainty as to where the line falls between Section 402 (a) and Section 402 (b) appeals. Whether this approach is feasible should be studied further. If this approach is not feasible, then this problem can be solved only by amending Section 402 to provide, as to all appeals, either for concurrent jurisdiction or for exclusive jurisdiction in the Court of Appeals for the District of Columbia.

8. If either the concurrent or exclusive jurisdiction approaches are recommended, the problems presented by the dif-

ferent procedures presently operative under the dual appeal system would, of course, be eliminated. If the dual appeal approach is recommended, it is believed that the procedures under both classes of appeals should be made as similar as possible. No reason is apparent for having such differences in procedure in view of the confusion they engender.

As will be apparent from a review of the above-listed factors, they have been confined to those which were felt to be basic and which should be considered in recommending a general approach to the problem of judicial review of the Commission's orders. In view of the basic nature of this problem, it seems that a thoughtful appraisal of this matter is called for and should be undertaken. Once a general approach is decided upon, matters of detail may then be considered."

The second subcommittee, of which David W. Robinson of Columbia, South Carolina, was Chairman and Richard L. Perry of Washington, D.C. was Vice-Chairman, has engaged in a study of the status of and weight to be given Examiners' Reports and Recommended Decisions on the occasion of Judicial Review of Agency Action. This likewise involved consideration of such Agency itself.

This subcommittee submitted a Majority Report, with strong dissents by members Murray A. Miller and William A. Golub of New York & George H. Hart of the State of Washington. Vice-Chairman Jennes of the Committee on Judicial Review also submitted written views in disagreement with the Majority Report.

The full Report of the Majority of this subcommittee, together with the expression of dissenting views above-mentioned, will likewise be submitted to the Section Chairman and will be available for distribution at the Annual Meeting at St. Louis. The following excerpt illustrates the views of the subcommittee Majority.

During the ten-year period in which the Administrative Procedure Act was under consideration, the matter of giving weight to the examiner's findings received consideration. The Attorney General's Committee on Administrative Procedure had this to say:

In general, the relationship upon appeal between the hearing commissioner and the agency ought to a considerable extent to be that of trial court to appellate court. Conclusions, interpretations, law, and policy should, of course, be open to full review. On the other hand, on matters which the hearing commissioner, having heard the evidence and seen the witnesses, is

best qualified to decide, the agency should be reluctant to disturb his findings unless error is clearly shown.

Despite this recommendation of the Attorney General's Committee, the Act contained no provision making a trial examiner's findings presumptively correct. In writing the opinion in *Universal Camera Corp.* v. *N.L.R.B.* (1959), 340 U.S. 474, 494, Mr. Justice Frankfurter suggests that because the examiner's report is a part of the record the Labor Board should be influenced by it. He states that on court review 'evidence supporting a conclusion may be less substantial when an impartial, experienced examiner who has observed the witnesses and lived with the case has drawn conclusions different from the Board's than when he has reached the same conclusion.' (340 U.S. 496). Cf. *National Labor Relations Board* v. *Universal Camera,* 190 F. 2d 429. While this language apparently gives to the examiner's findings in labor cases some vague degree of weight, it is not clear that where the Congress has established the more conventional type of court review even this weight can be given. *F.C.C.* v. *Allentown* (1955), 349 U.S. 358. Under existing law it is clear that the administrative agency retains the power to decide both law and fact and its findings of fact, not those of the hearing officer, control on court review. As stated in the Attorney General's Manual on the Administrative Procedure Act (1948), p. 83:

> . . . the agency is in no way bound by the decision of its subordinate officer; it retains complete freedom of decision, as though it had heard the evidence itself. This follows from the fact that a recommended decision is advisory in nature. . . .

If, therefore, this rule is to be changed, it must be by statute rather than by Court. *F.C.C.* v. *Allentown, supra.*

Reasons For and Against Change

The reasons generally advanced as to why the factual findings of a hearing examiner should be accorded weight are those contained in the above quotation from the Report of the Attorney General's Committee on Administrative Procedure. Frequently, a comparison is made between the review of a Master's recommendation by a District Judge and that of a hearing examiner by an administrative agency. There is no reason to believe the hearing examiner less competent than the average Master. Since he functions in a narrower field than does the Master, he should be more competent. The judge is named for life, the agency member for a shorter period. The agency member need not be a lawyer. Usually the judge himself studies the record and writes his own decision. Frequently the agency decision is by some anonymous

staff member who has not heard the evidence or the arguments, a practice which has been described as the 'dark side of the moon.' If an administrative agency is an expert body, it is so because of its staff, not because of any unusual ability of its members.

The view that the agency should make the findings even though no member hears and sees the witnesses is based on the view that the agency is an expert group charged with responsibility in a field where expert knowledge is important, that many issues involve both law and fact and therefore decisions are more difficult if the agency rules on the law and the examiner the fact, and that many factual determinations are based on the evaluation of written documents and letters not on the demeanor of witnesses. Fuchs, 'The Hoover Commission and Task Force Reports on Legal Services and Procedure,' 31 *Ind. Law Journal* 1, 27-29.

RECOMMENDATION

We would recommend that the Administrative Procedure Act be amended to provide that when factual findings are made by a hearing commissioner these findings must be accepted by the agency and by reviewing courts unless clearly erroneous.

One illustrative dissenting view is that of subcommittee member William A. Golub of New York, as follows:

I do not believe that the clearly erroneous rule should be extended to all issues of fact that are determined by a hearing officer. At a minimum, a distinction should be made between factual issues which involve the credibility of witnesses and those as to which the demeanor of witnesses is of no significance. This distinction was carefully made by the Attorney General's Committee on Administrative Procedure in the portion of its final report quoted at page three of the subcommittee's report.

Where issues of credibility are not involved, I seriously doubt the wisdom of the application of the clearly erroneous rule. Even with respect to findings of fact dependent largely on the credibility of witnesses, I question the application of the clearly erroneous rule until such time as improvements are made in existing standards relating to the selection and status of hearing officers.

The third subcommittee has been considering the broad but basic question of the need for studies and improvements in the field of judicial review of administrative agency decisions. John M. Lynham of Washington, D.C. has served as Chairman and Honorable Everett C. McKeage of California as Vice-Chairman. This subject is also under study by the Association's Section of

Judicial Administration through its Committee on Judicial Review of Administrative Agency Decisions.

Particular comment is in order with respect to a pilot study to determine the amount of research which would be required for a full study and analysis of all existing Federal statutory provisions dealing with judicial review. Assisted through funds authorized by the ABA Section of Judicial Administration, this work was undertaken by The George Washington University under the direction of Professor J. Forrester Davison. An initial report, completed in August, 1960, indicated the conflicts and lack of uniformity in the various statutory provisions and pointed out the need for broad improvements. A second report by The George Washington University study group, completed in February 1961, reviewed administrative law literature since 1955 and concluded (1) there was no comparable material to the full study contemplated and (2) that the field was untouched outside of the work embodied in the initial study completed in August, 1960. An estimated $75,000 will be required for completion of the full study looking to recommendations for improvements in the field of judicial review of administrative agency decisions. The procedure for obtaining the requisite funds has since been under consideration by the Executive Committee of the ABA Section of Judicial Administration. Mr. Lynham's subcommittee strongly supports the work already accomplished and its continuance.

Conclusion and Recommendation

The subjects of (1) dual appeal procedures under the Federal Communications Act and (2) the status of and weight to be given to Examiners' Reports and Recommended Decisions have been the subject of intensive analysis by members of the Committee on Judicial Review, through the subcommittees earlier mentioned in this Report. These two phases of judicial review present matters of substantial importance in the field of Administrative Law. The current Chairman of the Committee on Judicial Review is of the strong view that the Reports of the two subcommittees, together with the views of dissenting members, should be placed on the Agenda of next year's Committee on Judicial Review of the Section of Administrative Law. It is felt that within the additional time available, adequate additional study and analysis will probably permit final recommendations by the entire Committee to the Section.

John F. Donelan, *Chairman*

REPORT OF THE LABOR COMMITTEE

Rules of Practice for National Labor Relations Board Recommended by Jenkins Committee

I

General

1. The Committee heartily endorses the proposed rules as a step in the right direction. In general, such rules are clear and simple and clarify NLRB procedures considerably, at the same time avoiding duplications. In particular, the Committee feels that the new provisions concerning pre-trial discovery techniques are good and deserve commendation. The Committee, however, is critical of certain portions of the proposed rules and sets forth below its particular criticisms and in certain instances favorable comments). (No comment is made as to certain minor technical defects, for the Committee believes the Board will doubtlessly discover and correct these itself.)

2. The number system in the proposed rules is quite confusing. The Committee suggests a possible revision of such system so that, for example, 2.145 would be a subsection of 2.14.

II

Description

1. Sec. 2.2 *Subparts*

Subparts B & J both contain general rules applicable to all types of proceedings. We suggest therefore, that this section be amended as follows:

a. Insert "except Subparts B & J" after the word "Subparts" on the first line.

b. Change the beginning of the second sentence from "Subpart B" to "Subparts B & J."

III

Subpart A—Definitions

1. Sec. 2.11—*Board; General Counsel; Board Agent*

We suggest the elimination in the first sentence of the words "at Washington, D.C." They are surplusage, and moreover may

raise a question as to whether the Board as such may exercise its powers outside of Washington.

2. Sec. 2.15—*Trial Examiner; hearing officer; Board agent conducting the hearing*

In accord with existing American Bar Association recommendations we suggest that there be added to this section a provision to the effect that only a lawyer may be a trial examiner or hearing officer.

IV

Subpart B—Rules of General Applicability

1. Sec. 2.32—*Jurisdiction*

a. The Committee believes that the rules should make it clear that in the future the Board will make no change in its jurisdictional standards without complying with the notice and hearing requirements of Sec. 4 of the Administrative Procedure Act. See 11 Adm. Law Bull. 280.

b. This section 2.32 fails to point out that presently in the District of Columbia the Board asserts plenary jurisdiction over all disputes affecting commerce. This is no doubt an oversight, and it is believed that the section should be amended to point out this fact.

2. Sec. 2.40 (e) (2) & 2.40 (f)—*Depositions & Interrogatories*

In both sections, for the sake of uniformity with other provisions of the rules, the reference to "Trial Examiner" should be amended to read "Board agent conducting the hearing."

3. Sec. 2.42 (c)—*Evidence—Burden of Proof*

The General Counsel, it is stated, has the burden in a complaint case of establishing a prima facie violation. Respondent then has the burden of going forward to rebut such prima facie case.

While these statements are not inaccurate, they are misleading in that they imply the burden of proof *shifts* to Respondent. This is not correct, for the burden of proof never shifts from the General Counsel. *Law and Son* v. *NLRB,* 192 F. (2d) 236 (C.A. 10); *NLRB* v. *Winter Garden Citrus Products Corp.,* 260 F. (2d) 913 (C.A. 5).

This section should be amended simply to state that if the General Counsel makes out a prima facie case, and it is not refuted,

Respondent may well be found guilty of the charge alleged against him.

4. Sec. 2.42 (g)—*Evidence . . . Official Notice*

On the 4th line the word "their" should read "his."

5. Sec. 2.42 (i)—*Evidence . . . Objections to Evidence*

No provision appears for making objections with respect to the conduct of a hearing, as distinguished from making objections to evidence. The committee believes that some such provision should be included in the new rules as it is in the present rules. See Secs. 102.41 & 102.66 (b) of present rules.

V

Subpart C—General Procedure for the Prevention of Unfair Labor Practices

1. Sec. 2.68—*Complaint . . . Contents . . .*

Subparagraph (b) provides that the complaint should contain a prayer for specific and general relief, thus permitting the Board to fashion an appropriate remedy.

The Committee believes, however, that the Board should be permitted to grant only the specific relief requested. Recently, in a case involving the Honolulu Star Bulletin (123 NLRB No. 51) the Board imposed the *Brown-Olds* reimbursement-of-union-dues remedy upon Respondent, even though the General Counsel never sought that remedy before the Trial Examiner and asked for it only when the case was on appeal to the Board. Since Respondent was unaware that the General Counsel was going to seek this remedy, it never had a fair opportunity to be heard on it. Fortunately, the U.S. Court of Appeals for the District of Columbia set aside the Board order in this case (274 F. (2d) 567), but the Board's action in the case would appear to suggest the need for a rule limiting the Board to granting only that relief which is sought and no more.

2. Sec. 2.71—*Answer*

Subparagraph (c) requires the answer, to contain, among other things, a clear and concise statement of the facts and matters of law relied upon. This goes far beyond even the requirements of the Federal Rules of Civil Procedure and would seem to call for both evidence and legal argument—matters which are more ap-

propriate for presentation at the hearing and in briefs rather than for inclusion in pleadings.

3. Sec. 2.80—*Filing of Briefs and proposed findings with the Trial Examiner*

The Trial Examiner, in his discretion, should be authorized, as the proposed rule states, to require briefs, if he believes that he needs them to help write his report. But if he does require them or if the parties themselves decide to file them whether or not required by the Examiner, the General Counsel's brief should be filed first. He is the complaining party and the Respondent should know the cases and other matters upon which the General Counsel relies in order properly to prepare his brief. A reply brief from the General Counsel should then be allowed to answer Respondent's brief. All of this is in conformity with common judicial procedure, and the rules should be amended to spell out these requirements.

4. Sec. 2.83—*Contents of Record*

The Committee approves the rule requiring briefs before the Examiner to be filed with the Board on appeal. This will frequently make the brief to the Board shorter than otherwise, and thus expedite the appeal.

5. Secs. 2.85 & 2.86—*Scope of Review; Exceptions*

The Committee suggests that the following be inserted before the beginning of the second sentence in Sec. 2.86 "Except by leave of the Board."

Thus the scope of review by the NLRB would be limited, through the application of the standards set forth in Sec. 286 and at the same time the Board would be authorized to allow review in other cases as well not meeting such standards. A twofold objective is thus attained. First, the limitation of review would lessen the workload of the Board and facilitate its disposition of cases. Second, the statutory requirement contemplated by Sec. 10(c) of the National Labor Relations Act of allowing a party to take exceptions in any case to an examiner's report would be fulfilled.

6. Sec. 2.90—*Withdrawal of Exceptions*

The proposed rule requires approval of the Board before exceptions may be withdrawn, on the theory that this parallels the requirement of Board approval before a charge or petition may

be withdrawn. But approval in the latter cases is needed in order to protect the rights of others. That would not seem true in the case of withdrawal of exceptions. Accordingly, no need appears for requiring Board approval in this situation.

7. Sec. 2.92—*Contents of Briefs*

This section would require the brief to refer specifically to the exceptions to which the discussion in the brief relates. This would impose an onerous and unnecessary burden upon the parties. Exceptions are commonly long and detailed. This would be true even under the proposed new rules, limiting the grounds for exceptions. The brief, on the other hand, argues in terms of principles as applied to the facts of the case. One section of the brief could well cover some 20 or 30 exceptions. To require, additionally, that the brief give specific reference to the exceptions would add nothing to the clarity of the argument. It would merely impose a redundant burden upon the writer of the brief.

8. Sec. 2.94.—*Oral Argument—Request for*

The Committee feels, contrary to the proposed rule, that oral argument should be allowed as a matter of right in all complaint cases, as an invaluable aid to emphasis and clarity of the written argument. Only thus can the practicing bar be sure that those who decide the case actually know the issues and the contents of the record.

9. Sec. 2.96—*Decision by Board*

The Committee suggests that there be added to this section a sentence reading

> "The Board shall issue no final decision unless it is supported by and is in accordance with the preponderance of the reliable, probative and substantial evidence."

This is in accord with the present Sec. 101.10(b)(1) of the Board's statement of Procedure.

VI

Subpart D—General Procedure for the Determination of Questions Concerning Representation

1. Sec. 2.132—*Petition . . . Contents*

This section requires the petitioner, in a petition filed under Sec. 9(c), to identify the existing bargaining representative, if any,

and the expiration date of any current or recently expired contract covering employees in the unit involved. It would seem clear that the existing bargaining representative should be advised of the fact that a petition has been filed. Accordingly, we suggest that the section be amended to require the petitioner to serve such bargaining representative with a copy of the petition and to include a certificate of such service in the petition.

2. Sec. 2.135—*Petition . . . Withdrawal*

Subparagraph (a)(1) refers to a situation in which a runoff election is to be held with only the petitioner on the ballot. Since a NLRB ballot always contains at least two choices this language would appear to require some clarification.

3. Sec. 2.140—*Hearings . . . Who shall conduct*

We suggest that the words "or a member thereof" be amended to read "any Board agent." This would permit the Board, whenever it deems it necessary, to designate as a hearing officer any employee it has other than simply a Board member.

4. Sec. 2.141—*Scope of hearing*

The Committee believes that this section should be amended to limit the admissibility of evidence to the relevant and material.

5. Sec. 2.142—*Administrative Determination of validity of evidence of Representation*

The Committee suggests that this section be amended to provide that when an investigation is begun under the section, the representation hearing itself should be stayed until a final determination is made in the matter being investigated.

6. Sec. 2.144—*Proceedings before the Regional Director*

Subparagraph (b) requires briefs to be filed within seven days after close of the hearing. This is too short a time allowance. A brief cannot be properly prepared until the transcript is received and this normally takes 10 days to two weeks after the hearing closes. The seven days should be changed to allow twenty-one days.

Subparagraph (h) requires Board approval of withdrawal of requests for review. No sound reason exists for requiring such approval. If the party seeking the review changes his mind, he should be allowed to do so without limitation.

Subparagraph (j) is unclear as to the time for filing briefs with

the Board where a case is transferred to it after the hearing closes but before briefs are filed with the Regional Director. At least 21 days from the close of the hearing should be allowed for this purpose.

7. Sec. 2.146—*Oral Argument*

The rules should permit oral argument as a matter of right in all cases of first impression or major significance, such as *Pittsburgh Plate Glass,* 117 NLRB 1728, a case involving the Board's discriminatory application of its *American Potash* doctrine, in which oral argument was denied. See also *NLRB* v. *Pittsburgh Plate Glass,* 270 F. (2d) 167 (C.A. 4)., *cert. den.* 361 U.S. 943.

VII

Subpart G—Procedure to Hear and Determine Disputes under Sec. 10 (k) of the Act

Sec. 2.254(b)—*Withdrawal of notice of hearing—Evidence of agreed-upon method of adjustment*

The Committee suggests that in the next to last line the words "accepted by the parties" be inserted after the word "method." This will make it clear that so long as the parties agree on a method of adjusting the dispute, that is an end of the matter. This would appear to be consistent with the statutory intent expressed in Sec. 10(k).

VIII

Subpart J—Miscellaneous

Sec. 2.324(b)—*Disclosure of information by Board Agents—permitted*

The Committee believes that this section should spell out more precisely when respondent must move for the production of a witness' statement, after the witness has testified for the General Counsel in an unfair labor practice proceeding. Recently, the Board ruled that such request for a witness' statement is to be made at the close of direct examination or else it is untimely. *Walsh-Lumpkin Wholesale Drug Co.,* 129 NLRB No. 31. The Committee feels that the rule should state exactly when the request must be made in order to be timely.

Comments on Landis Report on Regulatory Agencies, 86th Congress, 2nd Session—Section on National Labor Relations Board

In his report, Dean Landis recommends a return to the system existing under the Wagner Act, whereby the National Labor Relations Board appointed its own General Counsel, and appointed and directed the staff both in Washington and the Regional offices. The Board thus determined what cases to prosecute, conducted the prosecution, and rendered the decision. The system to which Dean Landis would have the NLRB return was outlawed by the Taft-Hartley Act of 1947. That statute separated the prosecuting and adjudicatory functions of the Board by creating the office of General Counsel, to be filled by the President, and conferring upon the General Counsel the power to issue and prosecute complaints and to supervise the legal staff and the regional offices. The Board was continued with adjudicatory but not prosecutorial powers.

In support of his recommendations Dean Landis emphasizes the difficulties of administering one statute through two heads. He brushes aside as not persuasive the report in 1959 to the Senate Labor Committee of an Advisory Panel on Organization and Procedures of the NLRB. That panel, composed of some of the outstanding scholars in the field, including former NLRB members, and headed by the present Solicitor General, Professor Archibald Cox, had recommended that the "two-headed" system be revised by changing the title of General Counsel to "Administrator" and transferring to him all functions under the National Labor Relations Act other than the adjudication of unfair labor practice cases. Thus, the Administrator would have complete control over all personnel, other than the Board and its legal assistants, and would acquire jurisdiction over representation cases. In addition, he would retain the General Counsel's complete control over the issuance of complaints in unfair labor practice cases and the prosecution of such complaints, except that his refusal to issue a complaint would be appealable to the Board, which might reverse him and direct the issuance of a complaint.

Dean Landis' recommendation largely ignores the basic reason for the separation of adjudicatory and prosecuting functions effected by the Taft-Hartley Act. That reason was that there was combined in one body the functions of prosecutor, judge and

jury, and Congress felt strongly that in so highly charged a field as labor management relations and the laws regulating such relations, the same tribunal ought not be permitted to serve as both prosecutor and judge. Perhaps no single factor motivated Congress more in enacting the Taft-Hartley Act than the belief that it was wrong, legally and morally, to combine these functions in one body. As stated by the House Labor Committee in its report at that time (*H. Rep. 245,* 80th Congress, 1st Session p. 25):

> "The bill thus achieves a separation of the Board's functions, the need for which has long been obvious. Acting as prosecutor, judge, and jury, and to all intents and purposes as its own Supreme Court insofar as its findings of fact are concerned, the Board seems to have found the temptation to be arrogant, arbitrary, and unfair irresistible."

While the House bill was modified in conference, the conferees did carry out the House desire to separate the prosecuting and adjudicatory functions by establishing the General Counsel set-up above described. *H. Rep. No. 510,* 80th Congress, 1st Sess. p. 37.

A return to the Wagner Act System would mean a return to the very system which Congress went to such pains to revamp and which had proven totally unworkable because of the many inequities in which it resulted. It is true that a single agency has the advantage of having central direction of the many lines of activities required to implement a broad legislative policy. Equally true is the fact that the lack of centralized direction of all phases of investigation, prosecution and adjudication hampers the development of programs under social legislation expressed in broad general terms. But it may well be doubted whether these arguments outweigh the argument that it is contrary to the elementary precepts of our jurisprudence to permit the same agency that prosecutes a case also to decide it. And this is particularly true in the sensitive field with which the National Labor Relations Act is concerned. See articles by former Board Chairman Farmer, 29 G.W. Law Review 353, 356-358 and by present Member Rodgers, 29 G.W. Law Review 252, 264-265.

We are not urging herein a retention of the *status quo* under the Act. Nor are we taking a position for or against the recommendation of the Advisory Panel above referred to nor any other particular recommendation which has been made for improvement in the administrative procedures under the Act, such as the recommendation that the Board be abolished and its functions trans-

ferred to a special labor court or to the federal courts. We do believe, however, that the recommendation of the Advisory Panel that refusal to issue complaints be made reviewable by the Board would go a long way toward obviating the difficulties inherent in a "two-headed" system and at the same time would leave intact the separation of the prosecuting and judicial functions under the Act. We are strongly of the view that a return to the Wagner Act system of combining in one agency the functions of prosecutor and judge is definitely contrary to the public interest.

MILTON C. DENBO, *Chairman*

Concurring Statement of Donald T. Weckstein

Both the procedures set up in the Wagner Act and the Taft-Hartley Act were pragmatic attempts to administer a relatively new kind of government. Neither experiment has proved entirely successful but several lessons have been learned.

(1) The cry against the combination of prosecuting and judging functions in one body sheds more heat than light on the subject. Carried to its extreme it would require two separate governments.

(2) Properly understood, the argument does warn of certain abuses which must be guarded against. The important safeguards consist of competent personnel, some insulation of authority, and internal and external checks to avoid and correct abuses.

(3) The degree of separation desirable will vary with the functions being performed by the agency. The more the agency looks like a court and prosecutor, the greater the need for separation. The greater the separation, the greater the likelihood of internal conflict and the lesser the chance for a uniformly administered policy.

Translated in terms of the immediate question, these lessons demonstrate to me that the NLRB is in need of a structural revision perhaps along the lines suggested by the Advisory Panel to the Senate Labor Committee in 1959. At any rate, I agree with the report that a return to the pre-1947 structure is undesirable. However, I feel the language in the report on the need to separate the functions is too sweeping. I would agree that the Board's functions of prosecuting and adjudicating unfair labor practices need to be separated to avoid abuse and the appearance of abuse, but my conclusion is based upon pragmatic considerations, not

adherence to a dogma which requires separation of prosecuting from judging in all circumstances.

Proposed Resolutions

I

Whereas, A special committee of the National Labor Relations Board has issued a recommended new set of Rules of Practice,

Whereas, Such rules have been carefully studied by a committee of the Administrative Law Section,

Whereas, In principle the American Bar Association endorses such rules

Now Therefore, Be It Resolved, That the American Bar Association

1. Commends the recommended rules in general, and
2. Recommends that the report of the Administrative Law Section, Labor Committee, dealing with such rules be laid before the National Labor Relations Board for consideration; and

Be It Further Resolved, That the Administrative Law Section is hereby authorized to represent the American Bar Association in consultations with the National Labor Relations Board or in hearings before such Board directed to the effectuation of this Resolution.

II

Whereas, It has recently been recommended to the President of the United States that there be a return to the system under the Wagner Act, whereby the National Labor Relations Board appointed its own General Counsel, and appointed and directed the staff both in Washington and the Regional Offices, and

Whereas, Such system combines in one agency the functions of prosecutor and judge, and

Whereas, The Taft-Hartley Act, amending the Wagner Act, was intended to separate the prosecuting and adjudicatory functions of the National Labor Relations Board, and

Whereas, Sound administrative procedure requires such separation,

Now Therefore, Be It Resolved, That the American Bar Association believes in preserving the functions of prosecution and adjudication in separate hands and therefore opposes any attempt to reunite them, and

Be It Further Resolved, That the Administrative Law Section is authorized to represent the American Bar Association in presenting the Association's views on this matter.

REPORT OF THE MEMBERSHIP COMMITTEE

The Administrative Law Section has approximately 2,000 members—only 2% of total ABA enrollment. This Committee's goal is a Section membership of 4,000.

It has been decided that this Committee should function continuously without the loss of any time for reorganization.

At the Mid-Year Meeting, the Committee obtained approval of the following program:

1. A membership goal of 4,000.
2. The printing of a standard form Section membership application blank.
3. The Membership Committee's use of one page in each issue of the Administrative Law Review, to be devoted to increasing Section membership.
4. The designation of a Vice-Chairman of the Committee for each Circuit and a member for each state beginning with the 2nd, 3rd, 4th and District of Columbia Circuits.
5. The immediate commencement of a four-year membership drive.

Subsequent to the Mid-Year Meeting, this Committee has accomplished the following:

1. Distributed 2,000 membership solicitation letters to new ABA members. Enclosed were application blanks and brochures describing Section activities.
2. Prepared a combined brochure-membership application for the use of the Section.
3. Prepared membership solicitation data for publication by the Editor of the Administrative Law Review.
4. Designated Vice-Chairmen for the 2nd, 3rd, 4th and District of Columbia Circuits, and members for each state in those Circuits.

Henceforth the Committee will consist of a Chairman for each Circuit and a member for each state. The Circuit Chairman will assign quotas to each State Chairman by personal contact. A suggested form letter will be supplied each State Chairman, who will seek new Section members wherever available. The names of all new ABA members will be forwarded to each State Chair-

man so that an invitation for Section membership may come from a fellow attorney in the same state.

The above program is under way in the 2nd, 3rd, 4th and District of Columbia Circuits and will be followed in the other Circuits, on a four-year plan.

JAMES J. BIERBOWER, *Chairman*
JAMES M. BALLENGEE, *Vice-Chairman*

REPORT OF THE NATIONAL COMMITTEE

As has been the practice, the National Committee examined hundreds of bills introduced in the current session of the Congress to determine whether they contained provisions relating to administrative practice and procedure of concern to the Section, and if so, whether such provisions were compatible with the aims of the Association embodied in its many resolutions in the field of administrative law and in legislation that it is sponsoring. Bills of concern that appeared likely to receive serious Congressional consideration were transmitted to appropriate Committees of the Section for their review and recommendations. Bills within the sphere of the activities of both this Section and other Sections were transmitted as well to the Chairmen of such other Sections.

Of particular concern this year has been the increased interest and action of the new Administration in the field of administrative law. It has been manifested by two principal developments. The first was the creation of a federal conference on administrative procedure under the Chairmanship of the Honorable E. Barrett Prettyman of the United States Court of Appeals for the District of Columbia Circuit. This matter is discussed elsewhere in this issue of the *Review* in the Report of the Special Committee on Administrative Conference, on which your Chairman serves under Mr. C. Roger Nelson.

The second development has been the various plans for reorganization of federal administrative agencies submitted to the Congress by the President pursuant to the Reorganization Act of 1949. To date seven plans have been so submitted. The first six call respectively for reorganization of the following agencies: The Securities and Exchange Commission, the Federal Communications Commission, the Civil Aeronautics Board, the Federal Trade Commission, the Civil Aeronautics Board, the Federal Trade Commission, the National Labor Relations Board and the Federal Home Loan Bank Board.

These six plans are all basically the same. They would give each agency authority to delegate by published order or rule any of its functions to a division of its members, or an individual member, or a hearing examiner, or an employee, or an employee board, including functions entailing the hearing and determination of cases and the issuance of orders therein. The agency would retain

a discretionary right to review action taken by its delegates upon its own initiative or upon petition of a party and would be required to review such action if a majority of its members less one so desired. If such review were declined the action of its delegates would be final action by the agency for all purposes, including judicial review. There would be transferred to the Chairman of each agency the functions of each respecting the assignment of personnel, including members of the agency, to perform delegated functions.

The seventh plan would abolish the Federal Maritime Board. Its regulatory functions would be transferred to a new Federal Maritime Commission of five members. Its functions in the award of subsidies and the promotion of the merchant marine would be transferred to the Secretary of Commerce and a Maritime Administrator at the head of the existing Maritime Administration in the Department of Commerce, charged with such duties as the Secretary prescribes. The new Maritime Commission would have the same authority to delegate functions as the first six plans would give the agencies to which they apply, and its Chairman would have the same authority to assign personnel as their Chairmen would have.

Under the Reorganization Act of 1949 such reorganization plans as those described above become effective 60 days after transmittal to the Congress unless within that time either the House or the Senate affirmatively disapproves them. As of July 21, 1961 the status of the seven plans was as follows: Plan 1 (SEC) was killed. While the House approved it, the Senate disapproved it. Plan 2 (FCC) was killed by disapproval of the House. The Senate did not act. Plan 3 (CAB) was approved by both the House and Senate and became effective July 2, 1961. Plan 4 (FTC) was approved by both the House and Senate and became effective July 8, 1961. Plan 5 (NLRB) was killed by the House of Representatives on July 20, 1961 by a vote of 231 to 179. The Senate Committee on Government Operations is holding hearings on it. Plan 6 (Bank Board) is before the Senate and House Committees on Government Operations. Hearings on Plan 7 (Maritime) have been held by the House Committee on Merchant Marine and it has been referred to the House Committee on Government Operations. No Senate Committee has yet considered it.

At the time of the meeting of the Council of the Section on

May 20 and 21, 1961 the first four reorganization plans had been sent to the Congress. After they and the President's Message accompanying them had been discussed and considered at length the Council drafted and recommended that the Association adopt a specific resolution respecting them. While the Resolution expresses neither approval nor disapproval of any particular plan, it endorses the basic goal of all of them, namely, to quote from the reports thereon to the Congress, to provide "for greater efficiency in the dispatch of the business" of the federal administrative agencies. However, the Resolution strongly urges that any plan accepted by the Congress be implemented only by rules drawn, adopted and issued after adequate notice and opportunity for all interested persons and groups to be heard thereon, and after full consideration of the views of such persons and groups. The Resolution was adopted by the Association by approval by the Board of Governors, and thereafter transmitted by the Chairman of this Section to the Senate and the House, to appropriate members thereof, and to the Chairman of each of the agencies for which plans have been proposed.

As of July 15, 1961 neither of the two agencies for which Plans have taken effect (CAB and FTC), has published any rules or any notice of rule making to implement its new authority. However, what may possibly be a straw in the wind indicating the course the CAB will follow was its publication in the Federal Register of July 12 of an amendment to its existing rules of practice to make initial decisions of hearing officers which the Board has not been asked or *sua sponte* determined to review automatically final 20 days after the time for filing exceptions expires. No notice of or opportunity to submit views on the amendment was given and it was made effective on the date of publication on the ground that: "Since this amendment is not a substantive rule, but one of agency practice, notice and public procedure hereon are not required [by Section 4 of the Administrative Procedure Act] and the amendment may be made effective upon less than 30 days notice."

The foregoing amendment in no way affects any substantive or procedural rights. It merely eliminates the requirement that an order be issued to make final in form decisions that are final in fact under existing rules. Therefore no representations respecting it or the manner of its adoption were made. When action is taken in implementation of reorganization by the Civil Aeronautics Board or the Federal Trade Commission, or by other agencies

whose reorganization plans may become effective, your Committee will of course examine it and make such representations as are appropriate in the light of the Resolution discussed above and earlier resolutions of the Association relevant to the matter.

There has been Congressional as well as Executive initiative in the matter of reorganization. For example, S. 2034 would "expedite and improve the administrative process by authorizing the Federal Communications Commission to delegate functions in adjudicatory cases and repealing the review staff provisions" of the Communications Act. H.R. 6956 would permit the Federal Power Commission to delegate to individual commissioners or employees any of its functions except the determination of applications pursuant to Section 19(a) of the Natural Gas Act or Section 313(a) of the Federal Power Act for rehearing of orders, and functions vested by the Administrative Procedure Act in hearing examiners.

S. 1734 is comprehensive. It would amend Section 7 of the Administrative Procedure Act to permit all agencies it governs to delegate to one or more of its members or to hearing examiners all matters which must be determined on the record after hearing. It would amend Section 8 to make the decision of the hearing officer, in the absence of review by the agency, the decision of the agency without further proceedings. Review by the agency could be granted in the discretion of the agency but *only* upon one or more of the following grounds: (1) a clearly erroneous finding of material fact, (2) a necessary legal conclusion either without governing precedent or departing from established law, rule or precedent, (3) the presence of a substantial and important question of administrative policy or discretion, (4) prejudicial procedural error. This and other similar bills are receiving appropriate attention from this Committee as well as from the Association's Special Committee on Legal Services and Procedure and its Ad Hoc Committees.

BRYCE REA, JR., *Chairman*

REPORT OF THE COMMITTEE ON NATURAL RESOURCES

Possible changes of a far reaching nature in the appeals procedures of the Department of the Interior have been under consideration by the Committee this year. Our opportunity in connection with this matter came with the release to us in January by retiring Assistant Secretary George W. Abbott of a proposal which resulted from a study he conducted while Solicitor of the Department. The incoming Solicitor of the Kennedy Administration, Frank J. Barry, suggested two other proposals for study, indicating that he was not committed to these or any other course but wanted our views. All of this material was disseminated to the full Section membership in April through the *Review* (13 Ad. Law Rev. 159). A meeting was held with representatives of the Solicitor on May 26 for an exchange of views. It has not been possible in the time available to give the various proposals all the study they require.

It is the purpose of this report to analyze the proposals made in the light of Committee goals in the past on Departmental procedures. The major activity of the Committee next year should be to determine on one of the proposals (or some variation) and seek its adoption by the Department.

The Committee's inquiry thus far has at least demonstrated that if a "final administrative determination in the fairest, quickest, most efficient and economical manner" (Solicitor Barry's letter of February 7, 1961) is to be achieved then changes in the existing appeals processes are essential.

This report also includes a summary of several court cases involving the Interior Department of interest for the questions of administrative law posed.

Proposed Changes

The three Departmental proposals are discussesd below. To put them in context, the existing system is as follows: In most cases the initial decision in a public land matter is made by the local Land Office. This decision may be appealed to the Director of the Bureau of Land Management in Washington. His decision may in turn be appealed to the Secretary who has delegated his

authority in this regard to the Solicitor. Whenever we speak of "appeal to the Secretary" in this report appeal to the Solicitor is actually meant. The same two levels of appeals are available in connection with mining claims contests and other matters on which hearings may be held by an examiner and upon which he renders an initial decision. The one factor common to all proposals discussed below is the elimination of one of these levels of appeal, or a sharp modification of access to one level.

Several major criticisms of the existing system, beyond the delays involved in getting a decision, should be kept in mind in appraising the suggested changes. Among these are: 1. *No true separation of functions.* The Committee has frequently had indications of lack of confidence in a system in which the Director on his level and the Solicitor on the Secretary's level, are in effect chief counsel in opposition to appeals and at the same time appellate judges. 2. *Lack of opportunity for a hearing.* The great bulk of land matters are not subject to a hearing. The Committee has sought for ways to provide hearings, if requested, on the appellate level but the annual volume of appeals (about 5000 to the Director and 500, in turn to the Secretary) and the expense have made this an elusive ideal. Some consider that providing for oral argument as a matter of right would be of some assistance. 3. *Need for a controlled record on which a final administrative determination is promptly made.* There is need for a prompt and intelligible decision on a record, regardless of the level on which the decision is reached. The "record" is frequently a hodge-podge of material much of which has no bearing on the appeal, or it may be lacking documents essential to an intelligent appeal.

Plan A. *Abolishment of appeals to the Director, BLM, and creation of a Division of Appeals in the Solicitor's office.*

The proposal advanced by Mr. Abbott would bring the several branches of the Solicitor's office which now handle appeals into a unit to be known as the Division of Appeals. It would be headed by a Deputy Solicitor for Appeals whose sole responsibility would be adjudications. Also, under this proposal, appeals to the Director, Bureau of Land Management, would be abolished so that there would be a direct appeal from actions by BLM officials in the field to the Secretary.

This two-part plan was prepared to the point that all underlying

documents necessary to implement it were ready for publication. These documents said of eliminating appeals to the Director:

> "The present two-level appeals process imposes inordinate costs upon appellants and makes for long delays before final departmental action is taken."

And of the proposed Division of Appeals:

> "The purpose of this change in the organization of the Office of the Solicitor is to provide greater flexibility to meet shifting workloads, better efficiency and economy both in time and of money, uniform systems for docketing and processing appeals, and a more clean-cut separation in the Office between the adjudicatory and legal functions."

Plan B. *Abolishment of appeals to the Secretary except on petition in the nature of certiorari.*

Under this proposal decisions by the Director, BLM, made on appeals to him would be final, subject to a petition to the Secretary for the allowance of an appeal, in the nature of a petition for certiorari. Appeals to the Secretary would be allowed only where there were egregious error, an important question of law or policy, or a conflict in the decisions below. In addition, decisions of local Land Offices would in some cases become final, without any appeal at all. Examples of such cases are those in which the lands involved had already been otherwise disposed of by patent or withdrawal (unless interpretation of a withdrawal order were involved), and mineral leasing cases in which the lands involved were under the jurisdiction of another agency which had refused to consent to the lease or permit applied for.

Plan C. *Abolishment of Appeals to the Secretary except on petition in the nature of certiorari, and creation of a Division of Appeals in the Solicitor's office.*

This plan would maintain the present first level of appeal to the Director BLM and would make his decisions final, subject to petition to the Secretary for the allowance of an appeal. In addition, a Division of Appeals would be established in the Solicitor's office, one branch of which would handle appeals made from the decisions of hearing examiners, without any review on appeal in these cases by the Director, BLM. The head of this branch would have authority delegated to him to decide these appeals.

Discussion

Solicitor Barry's letter of February 7 which outlined Plans B and C above, noted:

> "The basic goals in any plan are to afford final administrative determination in the fairest, quickest, most efficient and economical manner possible. It may well be that another recommendation, not yet considered, may ultimately be the one, if any, selected. We are not, at this time, committed to any course but interested in evaluating all possible solutions."

Placing the three plans against the criticisms of the existing system, particularly those relating to lack of separation of functions and hearings, it would appear that none of them fully meet these problems. The discussion which follows will outline areas in which the plans fall short and what might be done to bring some solutions to these problems.

A part of Plan C, namely, that cases heard by hearing examiners in the field go directly to the new Division of Appeals for final decision by the chief of a branch which would handle cases conducted below in accordance with the Administrative Procedure Act, could with some modification provide an ideal method of handling cases. Certainly in this particular type of case the appeal at the Director's level can be eliminated. There has been a hearing and an initial decision, based on a record. The case is thus ripe for final agency action, assuming a party appeals, and this action should take place at the top level. Query whether this final action should be taken by a branch chief in the Solicitor's office? Ideally, this sort of case could be handled by a Board, independent of the Solicitor, which would preside over exceptions filed by the parties, elect or not to hear argument, if so petitioned, and issue a decision for the Secretary. This would undoubtedly be fairest (separation of functions would be solved), could be quickest and most efficient as well as the most economical, particularly if the Board took most or all of the volume intended for the Division of Appeals.

Apart from the Board approach, Plan A appears to go furthest in connection with the separation of functions problem. The intent is to construct a watertight compartment within the Solicitor's office, under a Deputy Solicitor, in which the only function would be to treat with appeals. Justified or not, however, the feeling that the prosecutor was also the judge would probably linger. It would appear that the only way to shake this would be the appointment

of an Appeals Board, by the Secretary, to be independent of the Solicitor. This idea is not new. It was in effect the recommendation of two Departmental Survey teams—one on the Bureau of Land Management and the other on the Office of the Solicitor—made to and approved by the Secretary in January and February, 1954.*

Plan B not only does not meet the separation of functions problem; it intensifies it. Under this plan appeals would stop at the Director, BLM level, except where an appeal to the Secretary might be allowed in the Secretary's discretion. As the 1953 Survey report noted (p. 19): "The appeal to the Director affords no independent review because it is in the 'line of command.'" Plan C has the same difficulty although it does incorporate the Division of Appeals utilized by Plan A, which Division would presumably sift petitions for allowances of appeals by the Secretary and then decide those allowed. This, together with the fact that Plan C would send appeals cases directly to the Secretary in which a hearing examiner had presided, would appear to make Plan C preferable to Plan B. Neither of them, however, would achieve at least the paper separation of functions found in Plan A.

As far as hearings are concerned, the only plan on which sufficient detail is available to indicate the possibilities is Plan A. Under this plan an appellant may request a hearing to present evidence on issues of fact or the Secretary may on his own motion order such a hearing. The allowance of such a request would be in the discretion of the Secretary and he would specify the issues to be heard. The effectiveness of such provisions, of course, depends upon the liberality with which they are invoked. Assuming a hearing to be ordered, the proposed rules to govern appear in general to be quite adequate. The existing rules provide similarly for hearings, in the discretion of the Director, and presumably Plans B and C would continue this provision. The only difficulty is that since 1956, when this rule went into effect, the Director has exercised this discretionary authority in only one instance of record, during a period in which there probably were well over 16,000 appeals handled, many of them involving controverted issues of

* See "Survey Report on the Bureau of Land Management, December 18, 1953" and memorandum "Subject: Reorganization—Bureau of Land Management" from Assistant Secretary Lewis to the Director, BLM, dated January 26, 1954; "Report on Reorganization of the Solicitor's office, February 5, 1954" and memorandum "Subject: Report of the Survey Team—Office of the Solicitor" from the Secretary to the Solicitor, dated February 9, 1954.

fact upon which hearings would have been desirable. It may only be speculated whether the discretionary hearing would find greater use on the Secretary's level. The chances are that it would if only because of remoteness from routine BLM practices and reporting procedures on which the Bureau adjudications quite naturally tend to rely.

The question, however, is whether a hearing may not be had on every appeal, if requested by the appellant. The Survey Teams in 1954 thought this possible. Their recommendation was that any person feeling himself aggrieved by a Land Office decision might elect either a hearing before a Field Commissioner for a Determination on the facts and the law, or an appeal on the record then made to an Appeals Unit in the office of the Secretary. Whether these recommendations still have practical validity requires an examination of the existing caseload with the situation in 1954. It is known to have increased. At the same time, however, a Field Commissioner system was established in 1956 for mining claims contests and the whole question might be reexamined in the light of this development. Costs of this system and the load it can carry are now susceptible of more accurate determination, based on five years of experience. It might also be borne in mind that the full utilization of the system for all appeals would carry with it the elimination of appeals activity at the Director's level and thus permit savings there.

Conclusions

The matters of separation of functions and of hearings have been stressed in this discussion of the three plans because they have been raised so often in the past in the Committee's considerations of Departmental procedures. Summary analysis on this basis indicates that Plan A is to be preferred over either of the others. This Plan presumably includes the direct appeal proposed in Plan C for hearing examiner cases, for decision, however, by the proposed Deputy Solicitor for Appeals, rather than by a branch chief. The possibilities of improving on Plan A, however, appear to be so tantalizing that the whole question and all three plans should have some further study. The Committee hopes that its discussion will provide a basis for further meetings with the Solicitor and his staff and that the adoption of some plan to improve procedures may result within the coming year.

Judicial Decisions

MacDonald v. *Best* (No. 7858, D.C. N. CAL. July 14, 1960)

This case, although not officially reported, may be found in Gower's Federal Service. It is of interest for the ruling that the Secretary of the Interior is not an indispensable party in an action to enjoin a local land officer from taking any action toward the cancellation of mining claims which had not been recorded as required under the Mining Claims Rights Restoration Act of 1955. The court found (at page 5):

> ". . . plaintiff does not seek the performance of an act, but rather to restrain the performance of an act, which plaintiff asserts is beyond the authority of the subordinate official. The decree sought will require the Secretary to do nothing, and will forbid him to do nothing. The Secretary, is therefore, not an indispensable party to this case (*Colorado* v. *Toll,* 268 U.S. 228; *Williams* v. *Fanning,* 332 U.S. 490)."

This case also stands for the proposition that the Secretary cannot effect a forfeiture of a mining claim not recorded under the 1955 acts. Although the Act requires such recordation within one year of the date of the passage of the Act, the Court points out that nothing in the Act authorizes a forfeiture.

California Company v. *Seaton* (D.C. D.C., October 6, 1960) 187 F. Supp. 445.

This case concerns the value base for computing royalties on gas under public land oil and gas leases. The Secretary ruled that royalty was to be computed on the value of the gas delivered to the pipeline. This value included expenditures necessary to condition the gas to meet pipeline requirements such as gathering, dehydration and compression.

The Company contended that the limit of the Secretary's statutory authority was to charge royalty on the fair market value of the gas in the condition in which it came from the well. The Company also contended that no determination of the reasonable value of the gas was ever made by the Secretary and no hearing was ever held. The court pointed to discussions between the local supervisor and representatives of the plaintiff, to a considerable exchange of correspondence, and to the decisions both in the Geological Survey and by the Secretary which gave reasons for their determinations. Thus the court found that there had been a suffi-

cient determination of value. The court deemed it proper, however, to observe in a footnote (p. 454, fn. 6):

> "It would seem that administrative procedures could be adopted by the Secretary to insure that lessees are fully advised in writing of reasons for determinations of value of gas productions and that some evidence of any hearings, informal or otherwise, be incorporated in the record in the event of possible appeal."

This case was appealed to the U.S. Court of Appeals for the District of Columbia and is now awaiting decision.

Pressentin v. *Seaton,* F. 2d 195 (D.C. Cir. 1960).

The Court of Appeals reversed the District Court and held that the Secretary abused his discretion in a legal sense in dismissing an appeal for failure to file on time a statement of reasons, the equivalent of a brief. The controlling regulation required that the statement of reasons be filed within 30 days after the notice of appeal. The statement was mailed within the 30 days. Through inadvertence it was not sent airmail and was received on the Monday following the critical Friday. The Court concluded that since there was no jurisdictional defect and the matter was one of discretion, the Secretary abused his discretion in dismissing the timely appeal for a "technical, excusable delay." The Court pointed out that prior to deciding the Pressentin appeal the Secretary had amended the rules to permit a 10-day grace period in which filings mailed within the 30-day period could be received in the appropriate office. This would have covered the problem the Pressentin case presented.

Union Oil Company v. *Udall,*—F.2d—(D.C. Cir. 1961)

This is a suit by oil shale placer claimant to compel issuance of a patent and cancellation of an oil and gas lease. The Secretary had refused to issue a patent pending the final outcome of a contest in which he had called on the claimant to prove the validity of its oil shale claims.

The Court of Appeals affirmed the District Court's judgment of dismissal. It regarded the Secretary's refusal to issue a patent as interlocutory and therefore not ripe for judicial review. Since the United States retained legal title it was within the Secretary's power to inquire into the validity of the mining claims.

Wright v. *Paine,*—F.2d—(D.C. Cir. 1961)

This case presented the question of whether public land was

available for noncompetitive oil and gas leasing where the lease offer was filed after the term of a prior lease would have expired if it had not been relinquished, but before the fact of relinquishment was posted on the tract book. The Secretary ruled the land was not available. The rejected offeror brought suit to compel issuance of a lease. The District Court granted the relief requested, but the Court of Appeals reversed, sustaining the Secretary's decision. The posting requirement was held to be in accordance with the long-standing practice and consistent with the underlying policy of affording an equal opportunity to all persons interested in leasing.

ROBERT L. MCCARTY, *Chairman*

REPORT OF THE NOMINATING COMMITTEE

The committee nominates the following members of the Section for the offices indicated to be filled by election at the Annual Meeting, 1961.

For Chairman: Raoul Berger of Washington, D.C.
For Vice-Chairman: Frank E. Cooper, of Detroit, Michigan
For Secretary: Elizabeth C. Smith of Washington, D.C.
For Council Members (three year terms, each):
Earl W. Kintner of Washington, D.C.
Richard H. Keatinge of Los Angeles, California
Frederic L. Kirgis of Denver, Colorado
Bernard J. Gallagher of Washington, D.C.
For Council Members (one year term, each):
C. Roger Nelson of Washington, D.C.
Bryce Rea, Jr., of Washington, D.C.

Statement of Applicable Provisions of By-Laws of the Section

Article III, Section 3 of the By-Laws of the Section provides that

"A year shall be deemed to commence at the close of the Annual Meeting of the American Bar Association and to end at the close of the next Annual Meeting. The Chairman, Vice-Chairman and Secretary shall be nominated and elected each year in the manner hereinafter provided, and shall hold office for a term of one year. The Section Delegate shall be nominated and elected each even-numbered calendar year and shall hold office for a term of two years."

Article II, Section 4, provides:

"At each annual meeting four members of the Council shall be nominated and elected for terms of three years; in addition, there shall be nominated and elected a Council member to fill each existing vacancy who shall serve during the remainder of the term of such vacant position."

Article III, Section 5, provides:

"No person shall be eligible for nomination or election as an officer, Section Delegate, or a member of the Council unless he shall have been a member of the Section throughout the year in which the election is held. No member of the Council who is serving as an elected member and has served as such continuously for

a period of three years shall be eligible for reelection as a member of the Council."

All of the persons herein nominated for Section Officers and Council Members have been Section members throughout the year in which this election is held and are otherwise eligible under the provisions of Article III, Section 5 of the By-Laws of the Section. Members of the Council whose terms expired this year are: Frederic P. Lee of Washington, D.C., Harold L. Russell of Atlanta, Georgia, Albert E. Stephan of Seattle, Washington, and Kenneth Teasdale of St. Louis, Missouri. They are not eligible for reelection at this time.

C. Roger Nelson and John W. Cragun were elected by mail vote to fill the vacancies created by the resignations of Raoul Berger, on his election in 1960 as Vice-Chairman of the Section, and of Donald C. Beelar, upon his election in 1960 as Section Delegate, both of whom were elected to the Council for three-year terms at the meeting in Miami Beach in 1959. Pursuant to Section 3 of Article VI of the By-Laws, the two vacancies thus created in 1960 were filled by a mail vote of the Council on an interim basis, for one year, ending in August 1961; thus there are these two vacancies of one year each to complete the unexpired terms of Messrs. Beelar and Berger. The Committee recommends C. Roger Nelson and Bryce Rea, Jr., both of Washington, D. C., to fill those vacancies.

Statement in Brief of Activities of Each Nominee

Raoul Berger

Mr. Berger is currently serving as Vice-Chairman of the Section and as a member of the Council. He has served as chairman of the Committee on Agency Rule-making and on a number of other important committees of the Section. He is engaged in the practice of law in Washington, D. C., and is a member of the Bar of both Illinois and the District of Columbia.

Frank E. Cooper

Mr. Cooper is currently serving as a Member of the Council, having been elected to a three-year term at the 1959 meeting. He is a member of the Bar of the State of Michigan and is also Professor of Law at the University of Michigan. He served as consultant to the Hoover Commission Task Force on legal services and pro-

cedure. He is a member of the firm of Beaumont, Smith & Harris of Detroit, Michigan.

Elizabeth Smith

Miss Smith is currently serving the Section as its Secretary and has served as such since the 1956 Annual Meeting. She has been a member of the Section for many years, is a member of the Bar of Oklahoma, and is, and for the past thirteen years has been, a Hearing Examiner with the Federal Communications Commission.

Earl W. Kintner

Mr. Kintner has served as Chairman of the Section and as Section Delegate to the House of Delegates. He is former Chairman of the Federal Trade Commission and is presently engaged in the practice of law in Washington, D.C. He is a member of the Bar of Indiana and of the District of Columbia.

Richard H. Keatinge

Mr. Keatinge has served as Chairman of the Section's Committee on Aviation since 1959. He is a member of the Bar of the States of California and New York and of the District of Columbia. He is a member of the firm of Keatinge & Older of Los Angeles, California.

Frederic L. Kirgis

Mr. Kirgis has served as Chairman of the Section's Committee on State Administrative Law since 1957. He was formerly Assistant Solicitor for the Department of Interior and also served as Special Assistant Attorney General of the United States. He is a member of the Bar of the States of Colorado and Illinois and of the District of Columbia, and a member of the firm of Gorsuch, Kirgis, Campbell, Walker and Grower of Denver, Colorado.

Bernard J. Gallagher

Mr. Gallagher has served as Chairman of the Section's Committee on Public Contracts from 1955 to 1958; as Chairman of the Section's National Committee 1958-1959; and as Chairman of the Committee of the Annual Meeting for the Section in 1959. He is a member of the Bar of the District of Columbia and a member of the firm of Gallagher and Thompson of Washington, D.C.

C. Roger Nelson

Mr. Nelson is currently serving as Chairman of the Committee on Administrative Conference and for three years served as Chairman of the Securities Committee of the Section. He is a member of the Bar of the District of Columbia and the Bar of the State of New York, and is a member of the firm of Purcell & Nelson of Washington, D.C.

Bryce Rea, Jr.

Mr. Rea is currently serving as Chairman of the Section's National Committee. He also served as Chairman of the Committee on Judicial Review in 1958-1959. He is a member of the Bar of the State of Virginia and of the District of Columbia, and a member of the firm of Watkins & Rea of Washington, D.C.

RICHARD S. DOYLE, *Chairman*
FANNY N. LITVIN
WILLIAM L. DENNING
Nominating Committee

REPORT OF THE SPECIAL COMMITTEE ON POSTAL MATTERS

An interim report of this committee was submitted in February at the Mid-Year meeting in which we requested Council action on three subjects. Action was deferred on all three. In the meantime the committee met and took the following action:

1. *Judicial Review in the Court of Appeals.* Although this committee initially asked for action by the Council to authorize the committee to seek a change in the judicial review statute to afford review in the Court of Appeals of the several jurisdictions rather than the District Court we have now, at the suggestion of several Council members, decided to defer action on this subject until our goals set forth in Item 2, infra are obtained.

2. *Subpoena Powers.* The Committee requests authority from the Council to seek subpoena powers for presiding officers in administrative hearings in the Post Office Department. A question was raised at the Mid-Year meeting as to whether this was inconsistent with the position of the Association in regard to the proposed Code of Federal Administrative Procedure (S. 1887, 87th Congress). To resolve any doubt on this point we have obtained a letter from Robert M. Benjamin, Esq., Chairman of the Ad Hoc Committee on Code of Administrative Procedure, the Association Committee which has the responsibility of sponsoring that bill on behalf of the Association. Mr. Benjamin stated as follows on this point:

> "I have been asked to comment on the proposal made by your Special Committee on Postal Matters to the Council of the Administrative Law Section concerning subpoena powers for presiding officers in the Post Office Department. I see nothing inconsistent with this proposal and the position of the Association in support of the proposed Code of Federal Administrative Procedure (S. 1887, 87th Congress) which is sponsored by this committee. The Code would give such authority to all presiding officers.
>
> "I believe that the Association's support of the Code justifies your position on subpoena powers without further action by the Association."

This committee urges that the Council authorize us to proceed on this part of our program.

3. *Fixing of Rates for Ocean Mail Transportation.* H.R. 204 would authorize the Federal Maritime Board to set ocean mail pay rates instead of the Postmaster General. When this matter was initially presented to the Council at the Mid-Year meeting we were requested to obtain the views of the Department and the industry on our proposal to provide full A.P.A. hearings in the Post Office Department on this type of ratemaking. The Post Office Department has been requested to submit its views to the Merchant Marine and Fisheries Committee of the House of Representatives. The content of this report and the hearings which will likely be held could have a material bearing on this phase of our program. We recommend that further action be deferred on this point until the report of the Post Office Department is released and studied.

The committee is maintaining liaison with the Post Office Department and studying their rules of procedure and proposed changes by the Department. We hope to suggest certain changes during the next year.

WM. I. DENNING, *Chairman*

REPORT OF THE PUBLIC CONTRACTS COMMITTEE

The Public Contracts Committee met throughout the year on the second Friday of each month at the office of its Chairman, Gilbert A. Cuneo, 1625 K Street, N. W., Washington, D. C. Largely due to the personal requests of lawyers interested in the activities of the Committee, membership grew to 70. To take advantage of such widespread interest, Committee meetings also were held in Los Angeles and San Francisco at frequent intervals throughout the year. Vice-Chairman Walter F. Pettit presided over the California meetings. All meetings were well attended.

At most meetings, an expert discussed some particular phase of activity that was of unusual interest to lawyers concerned with Government contracts. The following experts spoke:

Courts Oulahan, Deputy General Counsel, Atomic Energy Commission, discussed "Hearing Examiner v. Board of Contract Appeals as Designated Agent to Decide Appeals Under Disputes Article."

John T. Kothler, former Chairman, Renegotiation Board, private practice, spoke on "Recent Developments in Renegotiation."

Emil K. Gubin, private practice, discussed "Payment Problems of Subcontractors in Convenience Terminations."

Howard Nemerovski, formerly an Assistant Staff Judge Advocate, private practice, spoke on "Proposed Changes in the Proprietary Data Regulations."

J. Edward Welch, Associate General Counsel, General Accounting Office, discussed "Investigating and Auditing Activities of the General Accounting Office."

Carl Turmo, Chairman, Navy Panel, Armed Services Board of Contract Appeals, discussed the proposed amendments to the Administrative Procedures Act.

John W. Gaskins, private practice, spoke on "Preparation for Trial in the Court of Claims."

W. Harwood Huffcut, counsel, the Pacific Area, Military Sea Transport Service, Department of the Navy, discussed "Discovery and the Boards of Contract Appeals."

Gerritt W. Wesselink, Deputy General Counsel, Department of the Air Force, spoke on "Pitfalls in Government Procurement."

Owen Birnbaum, Contract Appeals Panel, Federal Aviation Agency, discussed "The Panel System v. Board of Contract Appeals as Designated Agent to Decide Appeals under the Disputes Article."

Minutes of the meeting were mailed to each Committee member. Active Committee members consisted of Board of Contract Appeals members, Government trial attorneys before those Boards, other Government attorneys, corporation attorneys and private practitioners.

During the course of the year the following Subcommittees were active:

Subcommittee on the Renegotiation Board—This Subcommittee keeps abreast of developments in the field of renegotiation with a primary objective of endeavoring to bring the procedures of the Renegotiation Board in line with the requirements of due process. (Chairman—Hon. John T. Koehler)

Subcommittee on Liaison and Cooperation with the Hebert Subcommittee—The objective of this Subcommittee is to assist the Hebert Subcommittee by placing before it a true picture of the procedural aspects of the Armed Services Board of Contract Appeals so that the recommendations placed before Congress will be based upon the true factual picture. (Chairman—John W. Gaskins)

Subcommittee for Study and Drafting of Uniform Rules for Government Boards of Contract Appeals—The objective of this Subcommittee is self-explanatory from its title. There is a sub-subcommittee studying the present rules of each of such Boards. This is a long-range program and will take many months. (Chairman—Paul H. Gantt)

Subcommittee on Relations with Department of Defense officials Concerning Armed Services Board of Contract Appeals Procedures and General Procurement Policies and Procedures—The objective of this Subcommittee is shown by its title. (Chairman—Gilbert A. Cuneo)

Subcommittee Concerning Physical Space Available for Board of Contract Appeal Proceedings—The objective of this Subcommittee is shown by its title. (Chairman—E. K. Gubin)

Subcommittee to Study S-2849—The objective of this Subcommittee is apparent from its title. (Chairman—Irving R. M. Panzer)

Subcommittee on Amendments to the Administrative Procedures Act.—This Subcommittee is to study, evolve and discuss the Committee's views in so far as material with regard to such Amendments. (Chairman—Gaines V. Palmes)

The Committee adopted a resolution to study what interest there is in and the possibilities of forming a Section on Public Contracts. Considerable interest has been expressed for the formation of such a Section.

GILBERT A. CUNEO, *Chairman*

REPORT OF THE SECURITIES COMMITTEE

The membership of the Committee this year consisted of 36 persons. In view of the size of the Committee, three subcommittees were organized to work in the following areas of Securities and Exchange Commission activity.

(a) Commission Administration and Procedure
(b) Commission Decisions
(c) Legislation

The change in national administration, followed by appointment of a new Chairman of the Securities and Exchange Commission and one other new Commissioner, the appointment by the Commission of a special adviser, and accomplished or prospective changes in a few of the principal staff positions, have resulted in a pause while new personnel familiarize themselves with Commission operations and Commission problems and reappraise Commission policies on various matters. Indicative of this is the fact that the Commission's legislative program which, except for amendments to the Investment Advisers Act, did not complete its journey through the legislative machinery in the last Congress, has not been reintroduced in the present Congress. The Committee understands that the program is being reexamined and will probably not be ready for presentation until the next session of Congress.

As a result of the situation just described the Committee's activity this year has consisted of study and informal exchange of views among members of the Committee and maintaining contact with the Commission and its staff in order to keep advised of Commission planning and be prepared to formulate Committee views when Commission thinking has crystallized. Subject to consideration have been the matters outlined below which lie particularly within the area of the Committee's interest.

Budget and Personnel

The Committee's report last year discussed at some length budget and personnel problems of the Commission, particularly as they related to the increasing backlog of registration statements and the long delays in processing such statements. The conclusion of that report that additional appropriations and additional

personnel were needed was likewise the conclusion of various other studies. The Landis Report on administrative agencies and the Booz, Allen and Hamilton report on its management survey submitted to the Bureau of the Budget in October 1960 both recognized additional competent personnel as the principal immediate need of the Commission. The finally approved budget for fiscal 1961 was $8,912,000 which provided for a total staff of 1,031 (after adjustment for lapses), an increase over 1960 of approximately 90 positions, of which 36 were in the Corporation Finance Division. In view of the continuing problems of delay in Commission processing of filings, the Chairman of the Subcommittee on Commission Administration and Procedure and the Chairman of the full Committee attended a conference with senior members of the Commission staff in February in order to obtain current information on budget and related matters. The Bureau of the Budget this year approved an appropriation request of $11,015,000, contemplating 135 additional positions of which 68 are in the Corporation Finance Division. It was the feeling of the Commission staff that the legislative atmosphere was favorable and this seems to be borne out by the fact that the House Appropriations Committee, which has usually recommended cuts in Commission appropriations, has approved an appropriation of $11,000,000, which represents a merely token cut from the amount requested.

Against the possibility that some may have reservations as to whether this substantially increased appropriation is necessary, it should be pointed out that the Chairman of the Commission on May 18, 1961 reported a backlog of registration statements under the 1933 Act as of March 31 of 474 and a median processing time from filing to effectiveness of 60 days. Backlogs in certain other areas of Commission work are comparable. The 1,031 positions for fiscal 1961 represent the same employment level as fiscal 1951, when 544 registration statements were filed as against 1629 in fiscal 1960 and an estimate of at least 1600 in 1961.

Landis Report and Reorganization Plan No. 1

A mail poll was taken of the Committee's reaction to the recommendations of the Landis Report relating to the Securities and Exchange Commission. A fair characterization of the reaction would be that there is general agreement with most of the Landis comments and recommendations though individual Committee

members expressed reservations or disagreement with particular items.

Reorganization Plan No. 1, submitted to Congress by the President on April 27, 1961, was the first formal step in implementation of the Landis Report. It would give broad authority to the Commission to delegate functions to panels of the Commission or individual Commissioners, to hearing examiners and to employee boards, or individual employees. In view of the time element involved, formulation of a Committee and Section position on the Plan seemed impractical, but the Committee has followed the hearings before the Congress in connection with the Plan. The Commission has indicated a conservative approach to the delegations authorized by the Plan, stating definitely that it does not intend to delegate matters involving substantial questions of policy such as general rule making, recommendations with respect to legislation, criminal references or disciplinary proceedings against lawyers and accountants practicing before the Commission. Adherence to such a conservative policy would of course depend upon the makeup of the Commission at a particular time. If the Plan becomes effective, study of the manner in which the power to delegate is exercised will be an important project for the Committee.[1]

Booz, Allen and Hamilton Management Survey

Reference has been made to the report of Booz, Allen and Hamilton upon its management survey of the Commission made for the Bureau of the Budget. In general, the report was complimentary of the manner in which the Commission was performing its functions and recognized that its principal difficulties were the result of insufficient personnel. The report does recommend certain realignments of Commission functions, particularly enforcement activities, and recommends various improvements in the management area. Commission action upon the Report's recommendations will likewise be a matter for future study by the Committee.

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[1] The Senate on June 21, subsequent to approval of this Report by members of the Committee, rejected Reorganization Plan No. 1. Bills similar in effect, but precluding delegation of rule making and providing greater rights of review by the full Commission, have been introduced in Congress.

Commission Opinions

The Commission announced about the turn of the year a new policy of assigning responsibility for preparation of the opinion in each case to an individual Commissioner and current Commission opinions are issued over the name of the designated Commissioner. It is still too early to assess the effect of this change upon quality of Commission decisions and the promptness with which they are issued.

W. Crosby Roper, Jr., *Chairman*

REPORT OF THE STATE ADMINISTRATIVE LAW COMMITTEE

The State Administrative Law Committee has had a substantial increase in activity during this year.

The Committee's most important project has been in connection with the proposed revision of the Model State Administrative Procedure Act, a project of the National Conference of Commissioners on Uniform State Laws. Pursuant to the resolution adopted by the Section at its last annual meeting, this Committee was charged with the duty of cooperating with the drafting committee of the National Conference headed by Dean E. Blythe Stason. A report of progress on this matter was made at the mid-year meeting of the Section in Chicago during February and an extensive report was made to the special meeting of the Section in Washington, D.C. on May 20 and 21.

A fourth draft of the proposed revision of the Model Act, containing many revisions in prior drafts and incorporating a number of suggestions from our committee, became available on May 1. It was immediately distributed to all committee members with request for comments and criticism. Time was short considering the date for the special meeting of the Section in Washington, but many committee members studied the Act promptly and carefully and responded with many helpful suggestions. All comments and suggestions were correlated and presented to the special meeting of the Section in Washington in conjunction with an extensive report on the proposed revision of the Model Act given by Dean Stason. After full consideration and extensive discussions, ten suggested modifications in the proposed draft were approved by the officers and council of the Section and were referred to Dean Stason for consideration by him and his drafting committee prior to final report by that drafting committee to the National Conference at its meetings in St. Louis this summer.

Another project has gotten under way during the course of this year under the supervision of the vice-chairmen of our committee, one having assumed responsibility for those states lying east of the Mississippi River and the other for those states lying west of the river. This project involves contact with the various state bar associations not only to establish liaison between them and this committee but also to offer the services of this committee and the information available to this committee in aid of administrative law projects, legislative or otherwise, in the various states. This

contact also is designed to promote the collection of additional data regarding administrative law processes and problems in the various states for our committee files and records and, thus, continues on a broader scale the project undertaken some years ago by this committee in the collection of data so that a "clearing house" of information and suggestion would be available.

It is anticipated that the project just mentioned will have a broader scope next year. When the final form of the proposed revision of the Model State Administrative Procedure Act is promulgated by the National Conference of Commissioners on Uniform State Laws, that Conference will give wide distribution to copies, including distribution to its members in each state. Those members will have the responsibility of presenting the proposed Act to the various legislatures and securing its consideration. It is anticipated that our committee will be charged with the responsibility of contacting the various state bar associations, within the mechanism and procedures set up this year, in explanation of the Model Act and in an effort to secure interest in it within the state bar associations. It is believed that this will result in very considerable activity by the State Administrative Law Committee in cooperating with state bar associations and in providing commentary and information to those associations so that they, in turn, can cooperate with their respective legislatures and the activities, in those bodies, which will be sponsored by the National Conference. It would seem apparent, also, that substantial collaboration with and cooperation with the proper delegates of the National Conference will be necessary.

The last activity of the State Administrative Law Committee of sufficient significance to warrant mention has involved an effort to keep abreast of activities in the various state legislatures and courts involving administrative law matters. Our committee membership has been active in following these matters and reporting legislative and judicial activity to the chairman for inclusion in the information files of the committee. Those files, on a state-by-state basis, are now sufficient to be a useful source of information and experience in a significant number of states and have been helpful in supplying data and suggestions to state officials and bar association committees in several other states which currently have administrative law legislation under consideration. It is believed that the committee is functioning helpfully in this area of its activities.

FREDERIC L. KIRGIS, *Chairman*

APPENDIX

FOURTH TENTATIVE DRAFT OF THE REVISED MODEL STATE ADMINISTRATIVE PROCEDURE ACT

Prefatory Note

Administrative agencies have, during the last four decades, become an essential and accepted part of State governmental organization, and the procedures by which such agencies adopt their rules and reach their decisions have attained paramount importance. Due very largely to the influences of the American Bar Association, the National Conference of Commissioners on Uniform State Laws and the state bar associations, substantial progress has been made in the direction of statutory codification of the procedures of state administrative agencies. Assurance has thereby been given of reasonable uniformity of practice and fair procedural methods for the benefit of all persons affected by administrative action.

Development of the Model State Administrative Procedure Act

A brief resume of the steps taken in the development of the Model State Administrative Procedure Act will reveal the careful attention it has received throughout the years. The act had its origin in the Section of Judicial Administration of the American Bar Association. In 1937, that Section created a Committee on Administrative Agencies and Tribunals. In 1938, at the American Bar Association meeting, the Committee presented a comprehensive report on the subject of Judicial Review of State Administrative Action in State Courts. The report was a scholarly and comprehensive document and drew much favorable comment. Again, in 1939, at the winter Section meeting, the same Committee reported—this time setting forth a draft of a proposed act dealing with certain major phases of state administrative procedure. The act was prepared to serve as a model for state legislation on the subject.

In accordance with established practice, this draft act was referred by the Section to the National Conference of Commissioners on Uniform State Laws, and at the 1939 meeting of the Conference after discussion of the measure, a Conference Committee was appointed for the purpose of further study and development of the measure.

During the year 1939-1940, the Conference Committee met with the Committee of the Section on Judicial Administration, and numerous changes in the original draft were mutually agreed upon. A revised draft was presented at the 1940 session of the National Conference, and after careful revision it was adopted and forwarded to the House of

Delegates of the American Bar Association for approval. However, in January of 1941, before action was taken by the House of Delegates, the United States Attorney General's Committee on Administrative Procedure filed its notable final report on the subject of federal administrative law, setting forth majority and minority drafts of bills for the regulation of federal administrative procedure. Thereafter, the Executive Committee of the National Conference decided that, in view of the Attorney General's Committee Report, it would be advisable to give still further consideration to the Conference measure, and accordingly it was recalled from the House of Delegates and recommitted to the Conference Committee.

Then in March of 1942, the so-called "Benjamin Report" was submitted to the Governor of New York. This report, entitled "Administrative Adjudication in the State of New York," was prepared by Robert M. Benjamin of the New York Bar as Commissioner appointed under Section 8 of the Executive Law of New York, for the purpose of studying the exercise of quasi-judicial functions of boards, commissions, and departments within the state. The report is a thorough critique of state administrative practice in New York and is at the same time a most valuable contribution to the general subject of state administrative procedure. The value of the report is by no means limited to New York State. It does for state administrative law and procedure what the Attorney General's Committee Report did for federal procedure.

With the advantage afforded by these two reports, a completely revised and much improved draft of the Model State Administrative Procedure Act was prepared and submitted for consideration at the 1942 session of the National Conference held in Detroit. There the act was re-examined once more and was again recommitted for final study. During the succeeding year the act was specially printed and widely submitted to state commissioners, bar associations, and other interested persons and groups in every state of the Union. Hundreds of helpful suggestions were received and acted upon. The measure was enacted almost verbatim by the state legislature of Wisconsin, where it received careful attention and much favorable comment. Again, the process of careful Conference examination was repeated at the 1943 session held in Chicago and the measure was set up for final action at the next session of the Conference.

In the meantime, there was additional activity in the federal field. The Special Committee on Administrative Law of the American Bar Association had prepared a draft of a proposed federal administrative procedure statute, paralleling in general nature the minority report of the Attorney General's Committee. This federal proposal finally was presented to and received the approval of the House of Delegates of

the American Bar Association at its meeting held in March of 1944, and it was introduced into Congress, sponsored by the Association. This measure, after being thoroughly studied by Judiciary Committees of Congress and revised in many particulars, was finally adopted on June 11, 1946, and is known as the Federal Administrative Procedure Act.

Finally, the Model State Administrative Procedure Act, after being held in abeyance pending Congressional action on the federal measure, was approved by the National Conference of Commissioners at its October, 1946, annual meeting. For the last fifteen years it has been available as an aid to states considering such legislation.

During the intervening years since the adoption of the original Model Act, further considered study has been given the subject of administrative procedure at both federal and state levels.

On April 29, 1953, the President of the United States, at the instance of the Chief Justice of the United States in his capacity as Chairman of the Judicial Conference, called a conference concerning unnecessary delays, expense and volume of records in adjudication and rule-making proceedings in the federal agencies. Some 56 agencies were represented in this Conference. Also present were members of the Federal Judiciary, Federal Trial examiners and members of the bar. The Conference formulated its recommendations and reported to the President in March, 1955.

Also on July 10, 1953, Congress, by Public Law 108, established the Commission on Organization of the Executive Branch of the Government, known as the "Second Hoover Commission." One of the Task Forces of this Commission was the Task Force on Legal Services and Procedure. It consisted of 14 members under the Chairmanship of James M. Douglas, former Chief Justice of the Supreme Court of Missouri. This Task Force undertook a major study of the procedures of federal administrative agencies. Its report included some 74 recommendations, together with proposed legislation for improvement of federal legal services and procedures. This report was submitted to Congress with the Hoover Commission Report dated March 28, 1955.

Subsequently, in May of 1955, the Board of Governors of the American Bar Association established a Special Committee on Legal Services and Procedure, under the Chairmanship of Ashley Sellers, a member of the Washington, D.C. Bar. This Committee, in cooperation with the Section on Administrative Law of the American Bar Association, undertook a thorough re-examination of the Federal Administrative Procedure Act in the light of the recommendations of the Hoover Commission Task Force. As a result, a new "Code of Federal Administrative Procedure" has been prepared and introduced into Congress. It is known as S-1070 of the 86th Congress. Many of the changes herein

recommended in this revision of the Model State Administrative Procedure Act are derived from S-1070.

At the same time, all through the years, there has been a substantial amount of activity at the state level. In recent years in the following states statutes have been enacted based in whole or in part on the Model State Administrative Procedure Act. The list of statutes includes:

(1) North Dakota—Uniform Practice Act. Adopted in 1941, this act was the first of the general remedial acts. It specified basic procedures, both for rule-making and for adjudication. See North Dakota Laws, 1941, ch. 240; Rev. Code 1943, §§ 28-3201 to 28-3222. See also Hoyt, "North Dakota Leads in Administrative Law Field," 25 J. Am. Jud. Soc. 114 (1941).

(2) Wisconsin—Uniform Administrative Procedure Act. Adopted in 1943, this act was modeled closely on a tentative draft of a model bill being prepared by the National Conference of Commissioners on Uniform State Laws. In the Wisconsin legislature it was acclaimed as an important and significant procedural reform. See Wisconsin Laws of 1943, ch. 375. For a careful discussion of the measure, see Hoyt, "Wisconsin's Administrative Procedure Act," Wis. L. Rev. (1944), pp. 214-239.

(3) North Carolina—Revocation of License Act. Adopted in 1939, and extensively amended in 1953, this act prohibits the cancellation of certain specified types of licenses without prior notice and hearing, and provides for appeal from cancellation orders to the superior courts. See North Carolina General Statutes, §§ 150-1 to 150-34.

(4) Ohio—Uniform Administrative Procedure Act. Also adopted in 1943 on recommendation of a special administrative law commission created by the preceding legislature. The act prescribes procedure for licensing agencies—licensing being broadly defined to include all orders determining "the rights, duties, privileges, benefits, or legal relationships of a specified person or persons." See Ohio General Code (1943) §§ 154-161 to 154-173. For a description of the work of the Ohio Administrative Commission that drafted the bill, see 15 Ohio State Bar Association Reports 581 (1943).

(5) Virginia—Administrative Agency Act. This act, adopted in 1944, contains a general and comprehensive treatment of the entire administrative process. See ch. 160, Acts of 1944, as amended by ch. 234, Acts of 1946.

(6) California—Administrative Procedure Act, Gov. Code, Title 2, Div. 3, Part 1, chaps. 4 and 5, effective September 9, 1953. Previously, three separate acts relating to the principal aspects of

procedure and review had been adopted in 1945, the result of two years of careful and thorough study by the California Judicial Council. The Council took advantage of previous studies and legislation, with the result that the provisions are exceedingly well-considered and effectively drafted. See the Administrative Procedure Act, Stats. 1945, ch. 867; Government Code, Tit. 2, Div. 3, Pt. 1. The Division of Administrative Procedure Act, Stats. 1945, ch. 869; Business and Professions Code, Secs. 110.5, 110.6; and the Judicial Review Procedure Act, Stats. 1945, ch. 868; Code Civil Procedure, § 1094.5.

(7) Illinois—Administrative Revenue Act. This act was adopted in 1945 and is limited to provisions concerning judicial review of administrative action. See Laws of Illinois (1945), p. 1144.

(8) Pennsylvania—Administrative Agency Law. This act, adopted in 1945 and amended in 1951, is a comprehensive act, including provisions for filing and publication of administrative rules as well as provisions concerning adjudication procedure and judicial review. See 71 Purdon Penn. Stat. Sec. 1710.1.

(9) Missouri—Administrative Procedure and Review Act. In 1945, Missouri enacted a comprehensive act, following the adoption of constitutional amendments designed to place suitable curbs and limits on administrative discretion. An interesting and highly informative account of the Missouri experience, by Richard D. Shewmaker of the St. Louis Bar, is printed with the provisions of the statute, 37 Vernon's Annotated Missouri Stautes, ch. 536, p. 145.

(10) Indiana—Administrative Adjudication Act. Indiana (which had previously adopted certain provisions applicable to administrative rule-making) in 1947 enacted provisions regulating adjudicatory procedures of the agencies, and providing for judicial review. Burns Indiana Statutes, ch. 30, Sec. 63.3001.

(11) Michigan—Administrative Procedure Act. Michigan in 1952 adopted a statute which follows closely the provisions of the Model State Act and imposes considerably more rigorous provisions as to the publication of administrative rules. Mich. Stat. Ann. §§ 3.560(21.1) to (21.10).

(12) Massachusetts—Fair Administrative Procedure Act. An excellently drafted, comprehensive and far-reaching statute was adopted by Massachusetts in 1954. Mass. Acts, 1954, ch. 681.

All of the foregoing activities have resulted in a very substantial maturing of ideas with respect to administrative procedures which must be fair to the parties and at the same time effective from the standpoint of government. This ripening of thought has induced the

National Conference of Commissioners on Uniform State Laws to undertake a revision of the 1946 edition of its Model Act. In 1958, a Special Committee was appointed for the purpose. The present revision is the result of Committee studies and Conference action.

Content of the Model State Administrative Procedure Act

A brief explanation will be helpful to reveal the content of the Model Act and the principles involved in it. The act deals primarily with major principles, not with minor matters of detail. Every student of administrative law recognizes that many of the procedural details involved in administrative action must necessarily vary more or less from state to state and even from agency to agency within the same state. Each state and each agency must work out these details for itself according to the necessities of the situation. However, there are certain basic principles of common sense, justice, and fairness that can and should prevail universally. The proposed act incorporates these principles, with only enough elaboration of detail to support the essential major features.

The major principles embraced in the Act as adopted by the Conference are:

(1) Requirement that each agency shall adopt essential procedural rules, and, except in emergencies, that all rule-making, both procedural and substantive, shall be accompanied by notice to interested persons, and opportunity to submit views or information;

(2) Assurance of proper publicity for all administrative rules;

(3) Provision for advance determination of the validity of administrative rules, and for "declaratory rulings," affording advance determination of the application of administrative rules to particular cases;

(4) Assurance of fundamental fairness in administrative adjudicative hearings, particularly in regard to such matters as notice, rules of evidence, the taking of official notice in quasijudicial proceedings, the exclusion of factual material not properly presented and made a part of the record, and proper separation of functions;

(5) Assurance of personal familiarity with the evidence on the part of the responsible deciding officers and agency heads in quasijudicial cases;

(6) Provision for proper proceedings for and scope of judicial review of administrative orders, thus assuring correction of administrative errors.

There is no good reason why these general principles should not govern throughout the entire administrative structure. They are not

details; they are essential safeguards of fairness in the administrative process. Yet too many state statutes are altogether deficient in regard to them.

Recent years have, however, been bringing forth in many quarters profound apprehension over the undisciplined growth of administrative powers, and this is the reason why the Congress and several state legislatures have been sufficiently concerned to take affirmative action.

The Model State Administrative Procedure Act is offered by the National Conference of Commissioners in the hope that it will serve a good purpose in states that may be considering the adoption of such legislation or the revision of acts already on the statute books. The Model Act will, of course, require careful adjustment to the special statutory conditions peculiar to the state under consideration, but the general principles set forth are of universal applicability and the suggested language will also be found helpful.

Revised Model State Administrative Procedure Act

AN ACT CONCERNING PROCEDURE OF STATE ADMINISTRATIVE AGENCIES AND REVIEW OF THEIR DETERMINATIONS

[*Be it enacted . . .*]

SECTION 1. [*Definitions.*] As used in this Act:

(1) "agency" means each state [board, commission, department, or officer], other than the legislature or the courts, authorized by law to make rules or to determine contested cases.

(2) "contested case" means a proceeding, including but not restricted to ratemaking [price fixing], and licensing, in which the legal rights, duties, or privileges of a specific party are required by law to be determined by an agency after an opportunity for hearing;

(3) "license" includes the whole or part of any agency permit, certificate, approval, registration, charter, or similar form of permission required by law, but it does not include a license required solely for revenue purposes;

(4) "licensing" includes the agency process respecting the grant, denial, renewal, revocation, suspension, annulment, withdrawal, or amendment of a license;

(5) "party" means each person or agency named or admitted as a party, or properly seeking and entitled as of right to be admitted as a party;

(6) "person" means any individual, partnership, corporation, association, governmental subdivision, or public or private organization of any character other than an agency;

(7) "rule" means each agency statement of general applicability

that implements, interprets, or prescribes law or policy, or describes the organization, procedure, or practice requirements of any agency. The term includes the amendment or repeal of a prior rule, but does not include (a) statements concerning only the internal management of an agency and not affecting private rights or procedures available to the public, or (b) declaratory rulings issued pursuant to Section 8, or (c) intra-agency memoranda.

SECTION 2. [*Public Information; Adoption of Rules; Availability of Rules and Orders.*]

(a) In addition to other rule making requirements imposed by law, each agency shall:

(1) adopt as a rule a description of its organization, stating the general course and method of its operations and the methods whereby the public may obtain information or make submissions or requests;

(2) adopt rules of practice, setting forth the nature and requirements of all formal and informal procedures available, and including a description of all forms and instructions used by the agency;

(3) make available for public inspection all rules and all other written statements of policy or interpretations formulated, adopted, or used by the agency in the discharge of its functions;

(4) make available for public inspection all final orders, decisions, and opinions.

(b) No agency rule, order, or decision is valid or effective against any person or party, nor may it be invoked by the agency for any purpose, until it has been published or made available for public inspection as herein required, except that this provision is not applicable in favor of any person or party who has actual knowledge thereof.

SECTION 3. [*Procedure for Adoption of Rules.*]

(a) Prior to the adoption, amendment, or repeal of any rule, the agency shall:

(1) give at least 20 days' notice of its intended action. The notice shall include a statement of either the terms or substance of the proposed rule or a description of the subjects and issues involved, and of the time when, the place where, and the manner in which interested persons may present their views thereon. The notice shall be mailed to all persons who have made timely request of the agency for advance notice of its rule-making proceedings, and published in [here insert the medium of publication appropriate for the adopting state];

(2) afford all interested persons reasonable opportunity to submit data, views, or arguments, orally or in writing. In case of substantive rules, opportunity for oral hearing must be

granted if requested by 25 persons, or by a governmental subdivision, or by an association having not less than 25 members. The agency shall consider fully all written and oral submissions respecting the proposed rule. Upon adoption of a rule, the agency, if requested to do so by an interested person, either prior to adoption or within 30 days thereafter, shall issue a concise statement of the principal reasons for and against its adoption, incorporating therein its reasons for overruling the considerations urged against its adoption.

(b) If an agency finds that an imminent peril to the public health, safety or welfare requires adoption of a rule upon less than 20 days, notice, and states in writing its reasons for that finding, it may proceed without prior notice or hearing (or upon any abbreviated notice and hearing that it finds practicable) to adopt an emergency rule. The rule so adopted may be effective for a period of not longer than 120 days [renewable once for a period not exceeding —— days], but the adoption of an identical rule under subsections (a)(1) and (a)(2) of this Section is not precluded.

(c) No rule is valid unless adopted in substantial compliance with this section, but the validity of any rule for non-compliance may not be contested after 2 years from its effective date.

SECTION 4. [*Filing and Taking Effect of Rules.*]

(a) Each agency shall file forthwith in the office of the [Secretary of State] a certified copy of each rule adopted by it, including all rules existing on the effective date of this Act. The [Secretary of State] shall keep a permanent register of the rules open to public inspection.

(b) Each rule hereafter adopted is effective 20 days after filing, except that:

(1) if a later date is required by statute or specified in the rule, the later date is the effective date;

(2) subject to applicable constitutional or statutory provisions, an emergency rule may become effective immediately upon filing with the [Secretary of State], or at a date to be determined by the agency, if the agency finds that an earlier effective date is necessary because of imminent peril to the public health, safety, or welfare. The agency's finding and a brief statement of the reasons therefore shall be filed with the rule in the office of the [Secretary of State]. The agency shall take appropriate measures to make emergency rules known to the persons who may be affected by them.

SECTION 5. [*Publication of Rules.*]

(a) The [Secretary of State] shall compile, index, and publish all rules adopted by each agency and remaining in effect. Com-

pilations shall be supplemented or revised as often as necessary [and at least once every 2 years].

(b) The [Secretary of State] shall publish a [monthly] bulletin in which he shall set forth the text of all rules filed during the preceding [month] excluding rules in effect upon the adoption of this Act.

(c) The [Secretary of State] may omit from the bulletin or the compilation rules the publication of which would be unduly cumbersome, expensive, or otherwise inexpedient, if such rules in printed or processed form are made available on application to the adopting agency, and if the bulletin or compilation contains a notice stating the general subject matter of the rules so omitted and stating how copies thereof may be obtained.

(d) Bulletins and compilations shall be made available upon request to [agencies and officials of this State] free of charge, and to other persons at prices fixed by the [Secretary of State] to cover mailing and publication costs.

SECTION 6. [*Petition for Adoption of Rules.*] Any interested person may petition an agency requesting the promulgation, amendment, or repeal of any rule. Each agency shall prescribe by rule the form for petitions and the procedure for their submission, consideration, and disposition. Upon submission of a petition, the agency within 30 days either shall deny the petition in writing (stating its reasons for the denials) or initiate rule-making proceedings in accordance with Section 3.

SECTION 7. [*Declaratory Judgment on Validity of Rules.*] The validity or applicability of any rule may be determined in an action for declaratory judgment in the [District Court of . . . County], when it is alleged that the rule, or its threatened application, interferes with or impairs, or threatens to interfere with or impair, the legal rights or privileges of the plaintiff. The agency shall be made a party to the action. A declaratory judgment may be rendered whether or not the plaintiff has requested the agency to pass upon the validity of the rule in question. The court shall declare the rule invalid or inapplicable if it finds that it violates constitutional or statutory provisions or exceeds the statutory authority of the agency.

SECTION 8. [*Declaratory Rulings by Agencies.*] Each agency shall provide by rule for the filing and prompt disposition of petitions for declaratory rulings as to the applicability of any statutory provision or of any rule or order of the agency. Rulings disposing of petitions have the same status as agency decisions or orders in contested cases.

SECTION 9. [*Contested Cases; Notice; Hearing; Records.*]

(a) In any contested case, all parties shall be afforded an opportunity for hearing after reasonable notice.

(b) The notice shall include a statement of:

(1) the time, place, and nature of the hearing;

(2) the legal authority and jurisdiction under which the hearing is to be held;

(3) the particular sections of the statutes and rules involved;

(4) a short and plain statement of the matters asserted. If the agency or other party is unable to state the matters in detail at the time the notice is served, the initial notice may be limited to a statement of the issues involved, and thereafter upon application a more definite and detailed statement shall be furnished.

(c) Opportunity shall be afforded all parties to respond and present evidence and argument on all issues involved.

(d) Unless precluded by law, informal disposition may be made of any contested case by stipulation, agreed settlement, consent order, or default.

(e) The record in a contested case shall include:

(1) all pleadings, motions, intermediate rulings;

(2) evidence received or considered;

(3) a statement of matters officially noticed;

(4) questions and offers of proof and rulings thereon;

(5) proposed findings and exceptions;

(6) any decision, opinion, or report by the officer presiding at the hearing;

(7) all staff memoranda submitted to the hearing officer or members of the agency in connection with their consideration of the case.

(f) The record of the oral proceedings need not be transcribed unless requested for purposes of rehearing or court review.

(g) Findings of fact shall be based exclusively on the evidence and matters officially noticed.

SECTION 10. [*Rules of Evidence; Official Notice.*] In contested cases:

(1) irrelevant, immaterial, or unduly repetitious evidence shall be excluded. The rules of evidence as applied in [non-jury] civil cases in the [District Courts of this State] shall be followed; but, when necessary to ascertain facts which cannot otherwise be proved, evidence not admissible under such rules may be admitted (except where precluded by statute) if it is of a type commonly relied upon by reasonably prudent men in the conduct of their affairs. Agencies shall give effect to the rules of privilege recognized by law. Objections to evidentiary offers may be made and shall be noted in the record. Subject to these requirements, when

a hearing will be expedited and the interests of the parties will not be prejudiced substantially, any part of the evidence may be received in written form;

[(2) documentary evidence may be received in the form of copies or excerpts, if the original is not readily available. Upon request, parties shall be given an opportunity to compare the copy with the original;]

(3) a party may conduct cross examinations required for a full and true disclosure of the facts;

(4) notice may be taken of judicially cognizable facts. In addition, notice may be taken of generally recognized technical or scientific facts within the agency's specialized knowledge; but parties shall be notified either before or during the hearing, or by reference in preliminary reports or otherwise, of the material noticed, and they shall be afforded an opportunity to contest the facts noticed. The agency's experience, technical competence, and specialized knowledge may be utilized in the evaluation of the evidence.

SECTION 11. [*Examination of Evidence by Agency.*] The agency shall personally consider the whole record or any portions cited by the parties. Whenever in a contested case a majority of the officials of the agency who are to render the final decision have not heard the case or read the record, the decision, if adverse to a party to the proceeding other than the agency itself, shall not be made until a proposal for decision is served upon the parties, and an opportunity is afforded to each party adversely affected to file exceptions and present briefs and oral argument to the officials who are to render the decision. The proposal for decision shall contain a statement of reasons and include the determination of each issue of fact or law necessary to the proposed decision, prepared by the person who conducted the hearing or one who has read the record. The parties by written stipulation may waive compliance with this section.

SECTION 12. [*Decisions and Orders.*] Any final decision or order adverse to a party in a contested case shall be in writing or stated in the record. Any final decision shall include findings of fact and conclusions of law, separately stated. Findings of fact, if set forth in statutory language, shall be accompanied by a concise and explicit statement of the underlying facts supporting the findings. If a party, in accordance with agency rules, submitted proposed findings of fact, the decision shall include a ruling upon each proposed finding. Parties shall be notified either personally or by mail of any decision or order. Upon request a copy of the decision or order shall be delivered or mailed forthwith to each party and to his attorney of record.

SECTION 13. [*Ex Parte Consultations.*] Unless required for the disposition of *ex parte* matters authorized by law, members or employees of an agency assigned to render a decision or to make findings of fact and conclusions of law in a contested case shall not, directly or indirectly, in connection with any issue of fact, consult with any person or party, nor, in connection with any issue of law, with any party or his representative, except upon notice and opportunity for all parties to participate; but any agency member

(1) may consult with other members of the agency, and

(2) may have the aid and advice of one or more personal assistants.

SECTION 14. [*Licenses.*]

(a) Whenever the granting, denial, or renewal of a license is required to be preceded by notice and opportunity for hearing, the provisions of this Act concerning contested cases apply.

(b) Whenever a licensee has made timely and sufficient application for the renewal of a license or a new license with reference to any activity of a continuing nature, the existing license does not expire until the application has been finally determined by the agency, and, in case the application is denied or the terms of the new license limited, until the last day for seeking review of the agency order or a later date fixed by order of the reviewing court.

(c) No revocation, suspension, annulment, or withdrawal of any license is lawful unless, prior to the institution of agency proceedings, the agency sent notice by mail to the licensee of individual facts or conduct which warrant the intended action, and the licensee was given an opportunity to show compliance with all lawful requirements for the retention of such license. If the agency finds that public health, safety, or welfare imperatively requires emergency action, and incorporates a finding to that effect in its order, summary suspension of a license may be ordered pending proceedings for revocation or other action. These proceedings shall be promptly instituted and determined.

SECTION 15. [*Judicial Review of Contested Cases.*]

(a) Any person aggrieved by a final decision in a contested case is entitled to judicial review under this Act. This Section does not limit utilization of or the scope of judicial review available under other means of review, redress, relief, or trial *de novo* provided by law. Any preliminary, procedural, or intermediate agency act or ruling is immediately reviewable in any case in which review of the final agency decision would not provide an adequate remedy.

(b) Proceedings for review are instituted by filing a petition in the [District Court of the ——— County] within [30] days after the service of the final decision of the agency or, if a rehearing is held,

within [30] days after the decision thereon. Copies of the petition shall be served upon the agency and all other parties of record.

(c) The filing of the petition does not itself stay enforcement of the agency decision. The agency may grant, or the reviewing court may order, a stay upon appropriate terms.

(d) Within [30] days after the service of the petition, or within further time allowed by the court, the agency shall transmit to the reviewing court the original or a certified copy of the entire record of the proceeding under a review. By stipulation of all parties to the review proceedings, the record may be shortened. Any part unreasonably refusing to stipulate to limit the record may be taxed by the court for the additional costs. The costs may require or permit subsequent corrections or additions to the record.

(e) If, before the date set for hearing, application is made to the court for leave to present additional evidence, and it is shown to the satisfaction of the court that the additional evidence is material and that there were good reasons for failure to present it in the proceeding before the agency, the court may order that the additional evidence be taken before the agency upon conditions determined by the court. The agency may modify its findings and decision by reason of the additional evidence and shall file that evidence and any modifications, new findings or decisions with the reviewing court.

(f) The review shall be conducted by the court without a jury and shall be confined to the record. In cases of alleged irregularities in procedure before the agency, not shown in the record, testimony thereon may be taken in the court. The court, upon request, shall hear oral argument and receive written briefs.

(g) The court shall not substitute its judgment for that of the agency as to the weight of the evidence on questions of fact. The court may affirm the decision of the agency or remand the case for further proceedings, or it may reverse or modify the decision if substantial rights of the appellant have been prejudiced because the administrative findings, inference, conclusions, or decisions are:

(1) in violation of constitutional or statutory provisions;

(2) in excess of the statutory authority or jurisdiction of the agency;

(3) made upon lawful procedure;

(4) affected by other error of law;

(5) clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or

(6) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

[Section 16. [*Appeals.*] An aggrieved party may obtain a review of any final judgment of the [District Court] under this Act by

appeal to the [Supreme Court]. The appeal shall be taken as in other civil cases.]

[SECTION 17. [*Constitutionality.*] If any provision of this Act or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are delared to be severable.]

SECTION 18. [*Repeal.*] All acts or parts of acts which are inconsistent with the provisions of this Act are hereby repealed, but the repeal does not affect pending proceedings.

SECTION 19. [*Time of Taking Effect and Scope of Application.*] This Act takes effect . . . and (except as to proceedings then pending) applies to all agencies and agency proceedings not expressly exempted. The provisions of this Act are amendatory of presently existing acts applicable to specific agencies.

REPORT OF THE VETERANS COMMITTEE

The activity of the Committee on Veterans has been confined to an informal consideration of (1) H.R. 849, a bill to amend Title 38, United States Code, to establish a Court of Veterans Appeals and to prescribe its jurisdiction and functions, and (2) H.R. 866, a bill to amend Section 4004 of Title 38, United States Code to require that the Board of Veterans Appeals render findings of fact and conclusions of law in the opinions setting forth its decisions on appeal. Each of these bills was introduced in the 87th Congress on January 3, 1961, by Honorable Olin Teague, Chairman of the Veterans Affairs Committee.

H.R. 849 was considered in conjunction with predecessor legislation. Hearings on then pending bills to provide for judicial review of decisions of the Administration of Veterans Appeals were held before a special subcommittee on Veterans Affairs, House of Representatives, Eighty-sixth Congress in April and May, 1960. The Committee on Veterans Affairs, to whom was referred the bill H.R. 12653 to establish a Court of Veterans Appeals and prescribe its jurisdiction and functions, on June 29, 1960, reported favorably thereon, without amendment, and recommended that the bill be passed. (Report No. 2031, House of Representatives, 86th Congress, 2nd Session.) Both the Veterans Administration and the Department of Justice filed unfavorable reports on the bills pending at the time the subcommittee hearings were held. However, the American Bar Association went on record as favoring the legislation. Raoul Berger, as Chairman of the Special Committee on Courts of Special Jurisdiction, appeared on behalf of the American Bar Association and testified in favor of the legislation.

Since the American Bar Association is already on record as favoring and is supporting the legislation, our committee concluded it was not appropriate at this time to make any representations or recommendations to the Council or the Section on H.R. 849.

At the time of this report, H.R. 849 is still pending before the House.

H.R. 866 passed the House on March 6, 1961, and at the time of this report is with the Senate Finance Committee. Our committee approved this bill in principle since the proposed legislation would improve administrative adjudication.

LOUISA WILSON, *Chairman*

THE CAUSE OF FREEDOM

WHITNEY R. HARRIS

Perhaps never before in history has freedom been in such general peril, and its cause so much the responsibility of free men, as in this sixth decade of the twentieth century.

Dictatorial power presses against democracy at every point of contact. Even as the remaining colonial territories gain independence, totalitarianism threatens to engulf them. Freedom as we have known it is under challenge in every continent.

We shall have to meet that challenge wisely and with courage if the cause of freedom is to prevail. This is not a time for complacency. There are storm clouds in the sky.

In other periods of history the existence of despotic governments was of minor concern to self-governing peoples. Monarchical and autocratic regimes could hold sway without affecting democratic governments in other lands.

But now we are engaged in a gigantic test of strength between a totalitarianism which seeks domination over all the earth and democracy which strives for the freedom of mankind.

In this struggle, every continent, every country, every island, is important. Each gain for freedom or loss to tyranny opens the way to further gains or losses. This is why we cannot treat lightly minor defections to dictatorship, and why Korea, and Laos, and Hungary, and the awakening continent of Africa, are all vital to us and to our way of life.

This ideological conflict in which we are engaged is obvious wherever Communist seas pound against free lands. But it is not only Communist tyranny which threatens democracy, but all forms of tyranny. Communism is the worst, because it is the most absolute form of despotism, but despotism in any form is the enemy of democracy.

It is not enough for us to be against Communism. We must be steadfast opponents of totalitarianism in every form. Or, to phrase it positively, we must be champions of democracy in every continent, in Asia and Africa, and in America.

Given a choice of alternatives, people who have experienced

* Remarks to the Administrative Law Committee of the Inter-American Bar Association, Bogota, Colombia, January 30, 1961.

freedom will always choose to be free. After World War II, Western Germany was impoverished and in ruins. The Soviet colossus was at its back. The people were hungry and depressed. Yet when given the choice between Communism and democracy, they chose democracy, and rebuilt Western Germany, miraculously, into the great, and prosperous nation which it is today.

We want the rule of law extended throughout the world, governing the relations between nations. But we must have, as well, the rule of law within each nation, so that freedom will belong to man, and man will not be merely the instrument of the state. The best defense against Communism is freedom, and the best assurance of freedom is the sound administration of law in a democratic society.

In its narrowest sense, administrative law is the body of rules and principles governing the powers and actions of agencies of government. In its broadest sense, it describes the legal relationship between man and state—the rights and duties of the citizen toward his government, and the authority and responsibilities of the government toward its citizens. Like the conduit which confines a turbulent stream, law both controls and expedites the flow of executive action. It holds government accountable to the people and assures protection of individual rights. A sound system of administrative law is the basic requisite of democratic government.

If free men are to prevail in the struggle against tyrannous forms of government in this latter half of the twentieth century, it is of primary importance that the administrative law of each nation be strong and sound and fully adequate to the purpose of protecting the individual and preserving his fundamental rights.

The Western Hemisphere should be the citadel of democracy. We threw off the yoke of foreign domination in the revolutions of the eighteenth and nineteenth centuries. And we established, in response to the desire of our own peoples, the republics of the New World. Our achievements brought hope and inspiration to far corners of the world.

Yet, some nations in the Western Hemisphere have not attained that full measure of freedom, supported by a strong administrative law system, which assures stability of democratic institutions. Regrettably, the shadow of totalitarianism has passed over the Americas. And Communism has found an opportunity in the Western Hemisphere which it never should have had.

The peoples of the Americas are not lacking in their attachment

to liberty. Our failures cannot be attributed to a turning away from democracy. They are due rather to inadequacies in our democratic institutions. These inadequacies have been most evident in education, in justice, and in law.

The foundation of democracy is education. Self-government requires informed judgment and discipline. The illiterate person cannot exercise the responsibilities of citizenship in a democratic society. Inadequacy of education leads to political instability and may contribute to the collapse of a free government. If we are to have that responsible citizenship which self-government demands, we must see to it that education, in all our lands, is adequate to that purpose.

The expression of democracy is justice. Our courts must be independent and incorruptible. Their decisions must be fair, and right, and impartial. They must have the courage to decide for the least individual against the state, itself; and such decisions must be respected and enforced. The courts of justice must be open to every man, protecting each in his just rights to life, liberty, and property. We, who are members of the Bar, cannot permit one single case of injustice to pass unchallenged in our courts.

The strength of democracy is in the law. The chief executive of a democracy while in office is responsible to the law. Those who administer government must act in compliance with the law and subject to the limitations which it imposes. Perhaps the very best that we, as lawyers, can do to strengthen democracy in the nations of the Western Hemisphere is to perfect the administration of government through sound legal procedures, adequate to the purpose of serving the public welfare and sufficient to the end of protecting individual rights.

Free nations in which education is universal, justice is impartial, and law is the supreme master over all men—governors and governed alike—offer the best hope of withstanding the forces of totalitarianism. We need to maintain democracy within our municipal law systems if these forces are to be defeated.

Beyond this, we should strive to establish an effective system of international justice crowning our municipal systems of law. Our scientists have not feared to make thermonuclear bombs which could destroy civilization. Certainly we should not fear to establish the principles of law which will permit civilization to live. We must find the way to make law supreme in international affairs, or we shall live forever in a world of force under a pall of fear.

This struggle, in which we are engaged across the whole area of our planet, between forces of totalitarianism and of freedom, is not new. It is as old as human society itself. Whether the master is tribal chief, or emperor, or dictator, the form and method of tyranny is the same. Yet despotism, in its every guise, ultimately will succumb to democracy. Supported only by force, it cannot prevail over the natural aspirations of men to be free.

The spirit of man is not the flame of a candle, but a beacon in the sky. The spirit of man will light the way to freedom.

MINUTES OF COUNCIL MEETING

Edgewater Beach Hotel—Chicago, Illinois

February 18-19, 1961

The Council of the Section of Administrative Law met February 18-19, 1961, at the Edgewater Beach Hotel, Chicago, Illinois.

Attendance

All officers and all members of the Council, except Messrs. Cooper, Deale and Cragun were present. In addition, approximately 25 other members of the Section, including the chairmen and vice-chairmen of a number of committees, were present.

Approval of Minutes

The minutes of the annual meeting of the Council held in August, 1960 were approved without change, as the first order of business when the Council reconvened on Saturday afternoon, February 18, 1961.

Chairman Harris announced that there were several matters which required early consideration by the Council: (1) Frequency allocation board matter—Communications Committee; (2) Administrative Conference; (3) H.R. 11411 (86th Congress), or similar proposal dealing with revision of Legislative Reorganization Act of 1946—Committee on Interstate Commerce; and proposed N.L.R.B. rules—Labor Committee.

Action with respect to the Administrative Conference was deferred pending arrival of Mr. Beelar who had been delayed—as had many others—due to weather conditions; and action on the report of the Committee on Interstate Commerce with respect to the proposed revision of the Legislative Reorganization Act of 1946 was deferred for consideration with other committee reports.

Frequency Allocation Board Matter

This matter received consideration at the 1960 Annual Meeting of the Council and the Section, as a result of which the Section recommended to the House of Delegates that the ABA oppose the enactment of H.R. 8426 (86th Congress). A report of such action

was made to the House of Delegates for its consideration at the 1961 Midyear Meeting.

Harold J. Cohen, chairman of the Communications Committee, gave a status report with respect to the matter, in which he pointed out that H.R. 8426, 86th Congress, 1st Sess., had been reintroduced in the 87th Congress by Congressman Oren Harris as H.R. 1162. This bill would create a super frequency allocation board with authority to divide frequencies between the Federal Government and private use. (For full discussion of matter, see Report of Communications Committee, 12 Ad. Law Bull., page 207, et seq.; and for text of resolution relating thereto adopted by the Section, see Minutes of the Annual Meeting of the Section, August 1960.)

Special Meeting of Council

It was agreed that a special meeting of the Council would be held in Washington the week-end following the American Law Institute meeting, in the conference room of the firm of Cummings and Sellars, 1625 K Street, N. W., Washington, D. C., Saturday and Sunday, May 20-21, 1961.

The special meeting of the Council will consider the following matters:

(a) Draft of Model State Administrative Law Act
(b) Hector Report
(c) Report on Annual Meeting by Mr. Teasdale
(d) Such other matters as may have arisen

Regional Meetings

There was discussion as to the desirability of participation in Regional meetings and it was agreed that such participation was desirable.

Administrative Conference

Smith Brookhart, chairman of the ABA Committee on Legal Services and Procedure, outlined the view of his committee as set forth in its report to the House of Delegates and asked approval by the Section of such report.

Bryce Rea expressed the view that legislation is premature at this time and made reference to Judge Prettyman's activities in the matter. He further stated that the President is considering the

matter and it is expected that the White House soon will issue an Executive order setting up such conference.

Mr. Kintner moved that the Council recommend to the House of Delegates that it defer action on the report and recommendation of the Special Committee on Legal Services and Procedure, which is on the calendar for the 1961 Midyear Meeting of the House. The motion was seconded by Frederic Lee. Mr. Beelar spoke against the motion and said that consideration is already late under the mandate of the House of Delegates, as set forth in the resolution adopted by the House at Miami; that we should get the Conference on the road by White House action as soon as possible, but that legislation is also most necessary and that, in his opinion, the resolution is subject to a point of order.

Harold Russell reported that he had notified other Sections and Committees of the ABA of the Council's intention to consider this matter; that he received a call from Mr. Ross of the Public Utilities Section, stating that the Section will oppose the adoption of the report of the Special Committee on Legal Services and Procedure.

Mr. Beelar stated that assurance has been given that interim action is supported. Chairman Harris read a recent letter of Judge Prettyman relative to the subject under discussion. Mr. Rea reported that he had spoken with Judge Prettyman on the past Friday morning; that the Judge is heartily in favor of the establishment of a permanent Conference ultimately, but is opposed to definite legislation at this time—believes one to two years' experience in operation is required to know the precise legislation needed; that Executive order is expected within days, and that he (Judge Prettyman) personally approved the By-laws proposed for the Administrative Conference. Mr. Rea pointed out differences and inconsistencies between the legislation proposed by the Special Committee and the proposed By-laws.

Mr. Kintner stated that he had been in on all organizational stages of the matter and that drafts of proposed legislation had been circulated and views obtained; that legislation should be drafted only after experience, and, at a minimum, action should be deferred until this summer. Mr. Brookhart stated that his committee was meeting with the Bar presidents for about 30 minutes and requested that further consideration of the Administrative Conference be deferred until the return of the Special Committee. This was done.

Upon return to the meeting of the members of the Special Com-

mittee, further consideration was given to the matter of proposed legislation for a Conference on Administrative Procedure. Mr. Berger stated that, while he yields to no one in respect for Judge Prettyman, he feels that the House of Delegates is a higher authority and that he is troubled by the danger of having the Conference heavily weighted by Government personnel; that he feels the personnel should be evenly divided and not weighted in favor of either the Government or the outside Bars. Franklin Stone expressed the view that legislation is now premature. Ashley Sellars pointed out that the action of the House of Delegates is binding upon the Section and the Special Committee, unless and until changed by action of the House of Delegates itself, and should not be ignored. He also stated that he is bothered by the conflict of interest statutes with respect to any member of the practicing Bar who may be asked to serve since, unless there is statutory authority for the Conference, he believes that non-Government participation may well be precluded and, in this connection, made reference to the fact that the Attorney-General would not give a ruling that outsiders could participate in setting up the Office of Administrative Practice and Procedure in the Department of Justice; that at a minimum, there should be exculpatory legislation to permit participation in the Conference by non-Government personnel. Bryce Rea supported the Kintner motion and expressed the view that the mandate does not require that we come forward immediately with legislation; that the proposed By-laws could be improved and, in response to the Sellars "conflict of interest" statement, expressed belief that it relates to compensated work and referred to the Judicial Conferences and the Hoover Commission. Mr. Rosenblum pointed out that in hundreds of advisory committees there is participation by those outside of Government. C. Roger Nelson said he is most concerned because there seemed to be inconsistencies and differences between the By-laws and the proposed legislation; and that he has not had full opportunity to consider such differences. Mr. Baskette raised the question as to whether the proposed Conference is an administrative agency—would it have status as a Government agency or quasi-Government agency—and then asked whether the Special Committee will present the legislation regardless of the action of the Section of Administrative Law. Mr. Beelar said he could not speak for the Special Committee, but he personally feels it would review action of Council and then decide what position it would take. Mr. Russell stated that he had mixed feelings; that while he

does not like either the By-laws or the bill, he hopes this will not be another time when the Bar has watched the World go by and not taken part in a matter at a critical stage; and that to delay action is not the answer to the problem. Mr. Gage expressed the view that we should make our own recommendation and perhaps should now propose legislation. Mark Martin moved as a substitute motion that a committee be appointed to draft a resolution. The motion was duly seconded and adopted, with Mr. Beelar abstaining. Chairman Harris then appointed C. Roger Nelson, chairman, Raoul Berger, Mark Martin and Bryce Rea as the drafting committee.

When the Council reconvened at 10 a.m. on Sunday morning, C. Roger Nelson, chairman of the drafting committee, reported that the committee had prepared a substitute resolution and read the text thereof to the Council. After some discussion, Harold Russell moved that the resolution be adopted. The motion was seconded by Jesse Baskette and adopted, with Mr. Beelar abstaining.[1]

Pursuant to the resolution, Chairman Harris thereafter appointed the following ad hoc committee on the Conference on Administrative Procedure for legislation: C. Roger Nelson, chairman, Harold L. Russell, vice-chairman, Frank Reifsnyder, Earl W. Kintner, Bryce Rea, Jr., Frank Ryburn, Jr., John M. Lynham, and Richard H. Keatinge.

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[1] The text of the resolution is as follows:

"WHEREAS The American Bar Association by action of the House of Delegates at its meeting in Miami, Florida, on August 24, 1959, adopted a resolution endorsing the organization of a National Conference on Administrative Procedure having a membership of government officials and of the Bar for the purpose of improving and expediting federal agency proceedings, to be established on a permanent basis by legislation, with interim action of the President;

"WHEREAS, Pursuant to authorization on September 1, 1960, by the President of the United States, the Honorable E. Barrett Prettyman has proceeded with plans to organize a National Conference on Administrative Procedure and the Section understands that establishment of such a Conference by Executive Order of the President is imminent; Now, Therefore, Be It

"Resolved, That the House of Delegates be informed that the Section recommends that action on the Report and Recommendation of the Special Committee on Legal Services and Procedure which is item #35 on the Final Calendar for the 1961 Midyear Meeting of the House of Delegates, be deferred until not later than the Annual Meeting of 1961; and, Be It

"Resolved, Further, That the Chairman of the Section appoint a special committee with directions (1) to observe the organization and operations of such conference as may be established by Executive Order, (2) on the basis thereof to draft and submit to the Chairman of the Section not later than July 1, 1961, proposed legislation establishing a permanent national conference on Administrative Procedure, and (3) in developing such proposed legislation, to consult with the Special Committee on Legal Services and Procedure."

Committee Reports [2]

1. *State Administrative Law Committee*

Frederic L. Kirgis, chairman of this committee, reported on the status of the redrafting of the Model State Administrative Law Act, advising that the redraft would not be completed before March, and that the matter is being coordinated with Dean Stason. It is expected that the redraft will be ready for consideration by the Council at its special meeting in May.

2. *Budget and Finance Committee*

Herman Tocker, chairman of the Budget and Finance Committee, reported on the financial status of the Section. The tenor of his report was that there is no money for the special Council meeting in May, without going into the reserve fund. He suggested motions to make the usual advances to the Chairman of the Section and to the printer.

Mr. Kintner thereupon moved that $500.00 be advanced to the Chairman for the expenses of the Annual Meeting. Motion was seconded and adopted.

Mr. Kintner then moved that an advance of not to exceed $2,500.00 be made to the printer. The motion was seconded by Mr. Gage and adopted.

After some discussion of subscriptions for Section publications, Mark Martin moved that we ask the Board of Governors for authority to set a $5.00 annual subscription price for Section publications. The motion was seconded by Mr. Nelson, and adopted.

3. *Treasury and Customs*

Scott P. Crampton, chairman of the committee, reported on the proposed action of the Tax Section relative to powers of attorney. No action was requested. He also referred to the proposed reduction in the amount of goods, from $500 to $100, which tourists may bring in duty-free.

4. *National Committee*

Bryce Rea reported that the committee is checking bills as they are introduced and sending them to the proper committee of the Section for consideration and report.

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[2] Where written reports were furnished by committee chairmen, copies of such reports are attached to the master copy of these minutes. In some instances the written reports are also published in the Administrative Law Review.

5. *Labor and Agency Rule Making Committees*

Since these two committee reports deal primarily with the same subject matter—proposed new rules for the National Labor Relations Board—they were considered at the same time. Milton C. Denbo, chairman of the Labor Committee, presented the views of such committee, and Victor C. Rosenblum, chairman of the Agency Rule Making Committee, presented the views of that committee.

Mr. Berger stated that some portions are not clear. Mr. Beelar questioned procedure.

Mr. Denbo pointed out that the Committee on Agency Rule Making believes that the certiorari type of procedure should be adopted, but that the Labor Committee takes the opposite view. He referred to a section of labor law which he says requires action by the Board and not by Hearing Examiner only. He also made reference to provisions of the Administrative Procedure Act. Mr. Rosenblum discussed the subject matter at some length and summarized differences in position as "channeled review v. chaos." Mr. Beelar raised the question of desirability of some limitation on the extent of exceptions and Mr. Denbo expressed the view that exceptions should be limited to important factors. Mr. Baskette expressed the view that certiorari label is misleading, that the question is: whether the Board may limit by categories types of cases where review cannot be had by matter of right.

After lengthy discussion, Mr. Kintner moved that the report of the Labor Committee and the report of the Agency Rule Making Committee (without accompanying resolutions) under consideration be sent to the Section on Labor Law for coordination and then made the subject of further consideration by the Council of the Section of Administrative Law; and that the Labor Law Section be advised that the Council of the Administrative Law Section tentativly concurs with the Jenkins proposals but that this Section reserves the right to reconsider the matter in August. The motion was duly seconded and adopted.

6. *Interstate Commerce Committee*

Harry J. Breithaupt, chairman of the Committee on Interstate Commerce, requested that consideration of the report of that committee be deferred until the next meeting of the Council.

Reagan Sayers, vice-chairman of the committee and chairman of a subcommittee, reported on noteworthy changes in appellate practice, reconsideration, etc., at the Interstate Commerce Commission. This report took the position that "institutional decisions" and

"anonymous" decisions should be abolished and each decision signed individually. Mr. Sayers said subcommittee report should be amended to refer to highest grade possible for Hearing Examiners, rather than GS-16 therein mentioned.

Robert W. Ginnane, vice-chairman of the committee, reported on the changes which have been and are taking place at the Interstate Commerce Commission which look toward expedition of work of that agency.

7. *Committee on Agency Ajudication*

Winston Fick, the chairman of the committee, was not present. Chairman Harris referred to the interim report of such committee.

8. *Committee on Federal Register*

David C. Eberhard, chairman of the Committee on Federal Register, reported at some length on the work of his committee and urged that the questionnaire which he had distributed be returned promptly. On motion of Mr. Kintner, the report of the committee was approved.

9. *Committee on Natural Resources*

Robert L. McCarty, chairman of the committee, reported on its work in connection with promulgation of new rules by the Department of the Interior relative to appeals.

10. *Committee on Postal Matters*

In the absence of William I. Denning, chairman of the committee, vice-chairman Charles D. Ablard reported on the activities of the committee. He stated that H.R. 7379 had been passed but that the objectionable provisions were deleted before passage. It was agreed that the resolutions in the written report of the committee will be considered at the special meeting of the Council in May. It was also agreed that a resolution with respect to mail steamship rates would be prepared for consideration at the special meeting of the Council.

11. *Agriculture Committee*

Frank B. Lent, chairman of the committee, reported on the work of the committee. No action was called for by the written report of the committee.

12. *Membership Committee*

James M. Ballengee, vice-chairman of the committee, reported on the progress of the membership drive, looking toward the goal of 4,000 members by the time of the meeting in San Francisco in

1962. It is expected that a vice-chairman will be named for each Circuit of the U. S. Court of Appeals with a member from each state.

13. *Aviation Committee*

Richard H. Keatinge, chairman of the committee, reported on activities of the committee. He advised that it is expected recommendations relative to the Hector Report will be ready for the May meeting of the Council. He reported that a proposed rule relative to Congressional appearances before Governmental agencies is pending at the Civil Aeronautics Board. He further reported that the matter of organization of a CAB practitioners association has been dropped.

14. *Committee on Administrative Process*

Leo Huard, chairman of the committee, reported on the work of that committee. No action was required by the report of such committee.

15. *Committee on Organization*

Raoul Berger, chairman of the Committee on Organization, commented on the written report of that committee.

After some discussion of Item 1 in the report, Mr. Teasdale moved that the Council instruct each committee chairman to report 90 days prior to the annual meeting the names of those committee members who have made contributions to the work of the committee and that the signatures to published reports be limited to those who have participated in the preparation of a report. The motion was seconded by Messrs. Beelar and Kintner, and adopted.

A motion was made to institute action looking to the amendment of the By-laws so as to provide for a chairman-elect of the Section and that a proposed draft of the necessary amendment be prepared for consideration at the May meeting of the Council. The motion was seconded and adopted.

16. *Annual Meeting Committee*

Kenneth Teasdale, chairman of the committee, gave a brief preview of what will be a most interesting Annual Meeting, in St. Louis, in August. More details will be given at the special meeting of the Council in May.

Section Delegate

Donald C. Beelar, reported as Section Delegate, that there is nothing—other than the Conference on Administrative Procedure matter—on the agenda of the House of Delegates on which the Section should take a position.

Mr. Beelar suggested that the Midyear Meeting of the Council be held late in December in Washington, D. C.; and that consideration should be given to eliminating the duplication between the Council and Section meetings at the Annual Meeting.

Nominating Committee

Mr. Harris, Chairman of the Section, announced that after consideration of the suggestions of the members of the Council as to the personnel of the Nominating Committee, he had decided to appoint the following persons as members of such committee:

Richard S. Doyle, *Chairman*
William I. Denning
Fanney N. Litvin

The meeting adjourned at 4:30 P.M., Sunday, February 19, 1961.

Elizabeth C. Smith, *Secretary*

DIRECTORY OF MEMBERS OF THE ADMINISTRATIVE LAW SECTION JULY 10, 1961

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Moore, James E., Van Antwerp Bldg., Mobile.
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Stoudenmire, S. F., Jr., Box 1689, Mobile.
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Foster, William C., Box 2199, Juneau.
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Daniels, H. B., Heard Bldg., Phoenix.
Davis, Laurence A., Title & Trust Bldg., Phoenix 3.
May, Robert A., Arizona Land Title Bldg., Tucson.
McAlister, Charles B., Security Bldg., Phoenix 4.
Mills, Larry E., Box 237, Williams.
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Henne, Fred E., 1501 Schaer, North Little Rock.
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Tarlowski, Louis, Rector Bldg., Little Rock.
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Heller, Harry, 1700 K St., N. W., Washington 6.
Heltzel, Charles H., Commerce Bldg., Washington 6.
Hennessey, Joseph F., Munsey Bldg., Washington 4.
Hensel, H. Struve, 1700 K St., N. W., Washington 6.
Hickey, William J., 2000 Massachusetts Ave., N. W., Washington 6.
Highsaw, James L., Jr., Tower Bldg., Washington 5.
Hobbs, Charles Allen, 1616 H St., N. W., Washington 6.
Hobbs, Claude E., Jr., 1000 Connecticut Ave., N. W., Washington 6.
Hogan, Wm. Joseph, Jr., 2122 California St., N. W., Washington 8.
Hollman, Lawrence D., Ring Bldg., Washington 6.
Hope, Robert S., Tower Bldg., Washington 5.
Howrey, Edward F., 1707 H St., N. W., Washington 6.
Hudson, Minor, Washington Bldg., Washington 5.
Humphrey, Helen F., 1509 22nd St., N. W., Washington 7.
Hynning, Clifford J., 1821 Jefferson, N. W., Washington 6.
Jaffee, Samuel H., 912 Dupont Circle, Washington 6.
Jay, J. Edward, 1711 Surrey Lane, N. W., Washington 7.
Jenks, Thomas E., 5044 Millwood Ln., Washington 16.
Jennes, Ernest W., Union Trust Bldg., Washington 5.
Johnson, Stanfield B., 1710 H St., N. W., Washington 6.
Johnston, Charles Robt., 3900 48th St., N. W., Washington 16.
Jones, Albert A., National Press Bldg., Washington 4.
Jones, F. Addison, 3060 16th St., N. W., Washington.
Jones, William B., Union Trust Bldg., Washington 5.
Jorgensen, Norman E., Wyatt Bldg., Washington 5.
Kaler, James Llewellyn, 6103 Crowell Dr., Washington 16.
Kanfer, Morris, 815 15th St., N. W., Washington 5.
Kassel, Leonard J., Interstate Commerce Commission Bldg., Washington 25.
Kelly, Raymond J., Post Office Bldg., Washington 25.
Kendall, David W., 1625 K St., N. W., Washington 6.

DISTRICT OF COLUMBIA—Cont'd

Kennedy, B. R., 4000 Cathedral Ave., N. W., Washington 16.
Kennedy, Cornelius B., Senate Office Bldg., Washington 25.
Kennedy, Harold L., Cafritz Bldg., Washington 6.
Kenney, William John, Ring Bldg., Washington 6.
Kestenbaum, Lionel, Atomic Energy Commission, Washington 25.
Kilby, Katherine, Department of Justice, Washington 25.
Kilgore, Robert Martin, 1741 K St., N. W., Washington 6.
Kilpatrick, H. C., American Security & Trust Co. Bldg., Washington 5.
King, Thomas Bertram, Pennsylvania Bldg., Washington 4.
Kintner, Earl W., 3037 Dent Pl., N. W., Washington 7.
Kistler, H. Donald, Tower Bldg., Washington.
Kittner, Joseph M., 1735 De Sales St., N. W., Washington 6.
Klagsbrunn, Hans A., 1200 18th St., N. W., Washington 6.
Kline, Arthur, Federal Power Commission, Washington 16.
Knebel, Thomas M., Munsey Bldg., Washington 4.
Kominers, Odell, Tower Bldg., Washington 5.
Koplovitz, William C., Bowen Bldg., Washington 5.
Lane, John D., 1001 Connecticut Ave., N. W., Washington 6.
Lane, John Francis, Commonwealth Bldg., Washington 6.
Law, Glen R., 3806 Jenifer St., N. W., Washington 15.
Layne, A. Alvis, Jr., Pennsylvania Bldg., Washington 4.
Lazarus, Arthur, Jr., 1700 K St., N. W., Washington 6.
Lear, Coates, Cafritz Bldg., Washington 6.
Leasure, C. Edward, 1701 K St., N. W., Washington.
Lee, Dorothy McC., 2618 30th St., N. W., Washington 8.
Lee, Frederic P., Ring Bldg., Washington 6.
Leva, Marx, 1701 K St. Bldg., Washington 6.
Leventhal, Harold, 1632 K St., N. W., Washington 6.
Levine, Abraham, 2000 P St., N. W., Washington 6.
Levine, Selma M., Mills Bldg., Washington 6.
Levy, Arnold, 1000 Connecticut Ave., N. W., Washington 6.
Liipfert, Eugene T., National Grange Bldg., Washington 6.
Linden, S. K., 1001 Connecticut Ave., N. W., Washington.
Lippman, William J., 1413 K St., N. W., Washington 5.
Littman, Harry S., 777 14th St., N. W., Washington 5.
Litvin, Fanney N., 2800 Quebec St., N. W., Washington 8.
Loos, Dickson R., Munsey Bldg., Washington 4.
Loos, Karl D., Munsey Bldg., Washington 4.

DISTRICT OF COLUMBIA—Cont'd

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Lynham, John M., Colorado Bldg., Washington 5.
Lynn, Marshall H., 3119 38th St., N. W., Washington.
Lyon, Richard K., Wyatt Bldg., Washington 5.
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MacDonald, David Grant, 1625 K St., N. W., Washington 6.
Mack, James E., 1028 Connecticut Ave., N. W., Washington 6.
MacLeay, Donald, 1625 K St., N. W., Washington 6.
Mahoney, William G., Tower Bldg., Washington 5.
Major, Linwood C., Jr., 2001 Massachusetts Ave., Washington 6.
Mander, Charles Wm., 1025 Connecticut Ave., N. W., Washington 6.
Mann, Julius David, Jr., 1120 Connecticut Ave., Washington 6.
Marenberg, Philip Paul, 3900 16th St., N. W., Washington 11.
Markel, Michael F., Munsey Bldg., Washington 4.
Marks, Leonard H., Cafritz Bldg., Washington 6.
Marmet, Robert A., 1820 Jefferson Pl., N. W., Washington 6.
Marshall, Burke, Dept. of Justice, Washington 25.
Mason, Lowell B., 1025 Connecticut Ave., N. W., Washington 6.
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Matson, Walter D., 1625 K St., Washington 6.
McAllister, Lambert, 2000 K St., N. W., Washington 6.
McCarty, Robert L., 734 15th St., N. W., Washington 5.
McClure, John E., 1710 H St., N. W., Washington 6.
McDonnell, Joseph T., 425 13th St., N. W., Washington 4.
McDonnell, Pierce S., Washington Bldg., Washington 5.
McDonnell, William F., Tower Bldg., Washington 5.
McDowell, Joseph E., 1625 K St., N. W., Washington 6.
McGee, Charles E., 1145 19th St., N. W., Washington 6.
McGlothlin, James H., Union Trust Bldg., Washington 5.
McGovern, William L., 1229 19th St., N. W., Washington 5.
McIlwain, Samuel D., 1523 L St., N. W., Washington 5.
McIntire, John A., 5317 Carvel Rd., N. W., Washington 16.
McKean, David J., 2928 28th St., N. W., Washington 8.

DISTRICT OF COLUMBIA—Cont'd

McKinney, James D., Jr., 1145 19th St., N. W., Washington 6.
McWhorter, John A., Jr., 1620 Eye St., N. W., Washington.
Melnicoff, Ben Ivan, 821 15th St., N. W., Washington 5.
Meloy, Lawrence V., 5125 Scarsdale Rd., Washington 16.
Menter, Martin, 1711 New York Ave., Washington 25.
Midlen, John H., Munsey Bldg., Washington 4.
Miller, Edwin Mason, Federal Power Commission, Washington 25.
Miller, Herbert J., Jr., World Center Bldg., Washington 6.
Miller, Lambert H., 918 16th St., N. W., Washington 6.
Miller, Neville, 4715 Berkeley Terr., Washington 7.
Miller, Thormund A., Transportation Bldg., Washington 6.
Miller, Vernon X., 1323 18th St., N. W., Washington.
Miller, William E., Shoreham Bldg., Washington 5.
Mintener, Bradshaw, 1741 K St., N. W., Washington 6.
Mitchell, William, Ring Bldg., Washington 6.
Mollenhoff, Clark R., National Press Bldg., Washington 4.
Molnar, Lorie M., 3850 Tunlaw Rd., N. W., Washington 7.
Moloney, William M., Transportation Bldg., Washington 6.
Moore, Donald R., 3316 Legation St., N. W., Washington 15.
Morgan, Edward P., 710 14th St., N. W., Washington 5.
Morgan, Gerald D., 808 17th St., N. W., Washington 6.
Morrow, Giles, 1012 14th St., N. W., Washington 5.
Moss, Robert Sheriffs, 815 15th St., N. W., Washington 5.
Mullin, Eugene F., Jr., Southern Bldg., Washington 5.
Murchison, David C., 1707 H St., N. W., Washington 6.
Murphy, Charlotte, Box 7783, Washington 4.
Murray, James A., 4529 Verplanck, N. W., Washington 16.
Murville, Dean A., Office of General Counsel, Washington 25.
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Nathan, Hans A., 729 15th St., N. W., Washington 5.
Nehemkis, Peter R., Jr., 1700 K St., N. W., Washington 6.
Nelson, C. Roger, Barr Bldg., Washington 6.
Noble, Ben Paul, 2140 P St., N. W., Washington 7.
Nolan, John Stephan, 1001 Connecticut Ave., N. W., Washington 6.
Nutting, Charles B., 4901 Tilden, N. W., Washington 16.
O'Connell, Quinn, 1225 19th St., N. W., Washington 6.

DISTRICT OF COLUMBIA—Cont'd

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O'Hara, Francis J., Jr., 1625 K St., N. W., Washington 6.
Oulahan, Courts, 3214 Reservoir Rd., N. W., Washington 7.
Pace, Russell B., Jr., Colorado Bldg., Washington 5.
Palmes, Gaines V., Tower Bldg., Washington 5.
Panzer, Irving R. M., 1735 De Sales St., N. W., Washington 6.
Parrish, Robert M., 6303 Massachusetts Ave., Washington 16.
Patrick, D. M., Colorado Bldg., Washington 5.
Perlman, T. S. L., Tower Bldg., Washington 5.
Phelan, Arthur J., Colorado Bldg., Washington 5.
Philos, Conrad D., 4701 29th Pl., N. W., Washington 8.
Pike, Henry H., 1869 Wyoming Ave., N. W., Washington 9.
Pinkney, James F., 1710 H St., N. W., Washington 6.
Plaine, Herzel H. E., Hill Bldg., Washington 6.
Ploss, Thomas H., 1650 Harvard St., N. W., Washington 9.
Plotkin, Harry M., Ring Bldg., Washington 6.
Pogue, L. W., 1001 Connecticut Ave., N. W., Washington 6.
Potts, Ramsay D., Jr., 910 17th St., N. W., Washington 6.
Poulton, Louis P., 1300 Connecticut Ave., N. W., Washington 6.
Powell, Bolling R., Jr., 1741 K St., N. W., Washington 6.
Pratt, John H., American Security & Trust Co. Bldg., Washington 5.
Purcell, Ganson, Barr Bldg., Washington 6.
Pyburn, Keith M., 425 13th St., N. W., Washington 4.
Rea, Bryce, Jr., Munsey Bldg., Washington 4.
Redding, Robert E., 1710 H St., N. W., Washington 6.
Reifsnyder, C. Frank, Colorado Bldg., Washington 5.
Reilly, Gerard D., Tower Bldg., Washington 5.
Reilly, James F., 1625 K St., N. W., Washington 6.
Rhodes, Fred B., Jr., Veterans Administration, Washington 25.
Rhodes, Paul Miller, Barr Bldg., Washington 6.
Rhyne, Brice W., Hill Bldg., Washington 6.
Rhyne, Charles S., 839 17th St., N. W., Washington 6.
Richter, Melvin, Pennsylvania Bldg., Washington 4.
Rigby, Scott G., Wyatt Bldg., Washington 5.
Ring, Carlyle C., Jr., Ring Bldg., Washington 6.
Rivlin, Lewis Allen, 3505 30th St., N. W., Washington 8.
Roberts, Wm. Allerton, Continental Bldg., Washington 5.
Rochmes, Louis L., 711 14th St., N. W., Washington 5.
Rockefeller, Edw. S., III, 4412 Volta Pl., N. W., Washington 7.
Rollo, Reed T., World Center Bldg., Washington 6.

DISTRICT OF COLUMBIA—Cont'd

Rollow, William E., 4807 Jamestown Rd., Washington 16.
Roper, W. Crosby, Jr., Union Trust Bldg., Washington.
Rosenfield, Harry N., 1735 De Sales St., N. W., Washington 6.
Ross, Bradford, 723 15th St., N. W., Washington 5.
Ross, Harry, Jr., Warner Bldg., Washington 4.
Ross, William Warfield, Pennsylvania Bldg., Washington 4.
Rowell, Russell, Munsey Bldg., Washington 4.
Roycroft, Howard F., Colorado Bldg., Washington.
Rubin, Seymour J., 1675 35th St., N. W., Washington.
Russell, Percy H., Jr., World Center Bldg., Washington 6.
Salisbury, Franklin C., 1624 Eye St., N. W., Washington 6.
Scharfeld, Arthur W., National Press Bldg., Washington 4.
Schifter, Richard, 1700 K St., N. W., Washington 6.
Schlefer, Mark P., Tower Bldg., Washington 5.
Schulsinger, Gerald G., Ring Bldg., Washington 6.
Schultz, Franklin M., 910 17th St., N. W., Washington 6.
Schuyler, Wm. E., Jr., Munsey Bldg., Washington 4.
Scott, Myron, Hotel Houston, Washington 4.
Seamon, Theodore I., Woodward Bldg., Washingtn 5.
Segal, Paul M., 816 Connecticut Ave., Washington 6.
Sellers, Ashley, 1625 K St., N. W., Washington 6.
Semmes, John Gibson, 1000 Connecticut Ave., N. W., Washington 6.
Shannon, Charles V., 1700 K St., N. W., Washington 6.
Shannon, Thomas Francis, 1730 K St., N. W., Washington 6.
Shapiro, David I., 1411 K St., N. W., Washington 5.
Sharp, James R., 1108 16th St., N. W., Washington 6.
Shea, Francis M., 734 15th St., N. W., Washington 5.
Shear, Daniel H., Interior Bldg., Washington 25.
Sheble, Walter Franklin, 1025 Connecticut Ave., N. W., Washington 6.
Sheffield, Malvern J., Jr., 1700 K St., N. W., Washington 6.
Sheriff, Seymour, Woodward Bldg., Washington 5.
Siciliano, Rocco C., 3924 Macomb St., N. W., Washington 16.
Simonds, Jerome H., 1000 Connecticut Ave., N. W., Washington 6.
Sims, William P., Munsey Bldg., Washington 4.
Slaughter, Harrison T., 1007 Ring Bldg., Washington 6.
Slaughter, Herbert J., Department of the Interior, Washington 25.

DISTRICT OF COLUMBIA—Cont'd

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Smethurst, Raymond S., Investment Bldg., Washington 5.
Smith, Edward S., Transportation Bldg., Washington 6.
Smith, Elizabeth C., 3000 Tilden St., N. W., Washington 8.
Smith, George S., 1240 19th St., N. W., Washington 6.
Smith, Joseph J., Jr., Colorado Bldg., Washington 5.
Smithey, Wayne H., Wyatt Bldg., Washington 5.
Smoak, Marion H., 5047 Lowell St., N. W., Washington 16.
Smoot, Charles Effinger, Federal Communication Commission, Washington 25.
Snider, Hubert D., Pennsylvania Bldg., Washington 4.
Solomon, Frederic, Federal Reserve System, Washington 25.
Somers, A. Norman, 4519 Alton Pl., N. W., Washington 16.
Sonosky, Marvin J., 1028 Connecticut Ave., Washington 6.
Spingarn, Stephen J., 1900 Que St., N. W., Washington 9.
Spriggs, Kahl K., Southern Bldg., Washington 5.
Stephen, John Erle, 1000 Connecticut Ave., N. W., Washington 6.
Stitt, Nelson A., 1000 Connecticut Ave., N. W., Washington 6.
Stone, Franklin M., 2500 Wisconsin Ave., N. W., Washintgon 7.
Stout, Clair L., Munsey Bldg., Washington 4.
Streeter, Laurie M., 1713 Rhode Island, N. W., Washington 6.
Strube, Donald E., Interstate Commerce Commission, Washington 25.
Strupp, Werner, 1735 De Sales St., N. W., Washington 6.
Surrey, Walter S., Woodward Bldg., Washington 5.
Sutherland, William A., Ring Bldg., Washington 6.
Sweeney, Edward C., 3300 Nebraska Ave., N. W., Washington 16.
Symington, A. Lloyd, 1701 K St. Bldg., Washington 6.
Tait, Edward T., Shoreham Bldg., Washington 5.
Tayloe, William C., 1025 Connecticut Ave., Washington 6.
Temko, Stanley L., Union Trust Bldg., Washington 5.
Timberg, Sigmund, 815 15th St., N. W., Washington 5.
Tocker, Herman, 2712 Navarre Dr., Washington 15.
Todd, C. D., Jr., 1825 Jefferson Pl., N. W., Washington 6.
Townshend, Aaron R., Munsey Bldg., Washington 4.
Toye, F. Gerald, Wyatt Bldg., Washington 5.
Trimble, South, Jr., Woodward Bldg., Washington 5.

DISTRICT OF COLUMBIA—Cont'd

Tuggle, Kenneth H., Interstate Commerce Commission, Washington 25.
Turney, Jack R., Jr., 2001 Massachusetts Ave., N. W., Washington 6.
Turney, John R., 2001 Massachusetts Ave., N. W., Washington 6.
Turney, William O., 2001 Massachusetts Ave., N. W., Washington 6.
Ulman, Lewis H., 1710 H St., N. W., Washington 6.
Underhill, Wm. Amory, 1625 K St., N. W., Washington 6.
Volpe, Joseph, Jr., 1701 K St., N. W., Washington 6.
vom Baur, F. Trowbridge, 1700 K St., N. W., Washington 6.
Wachtel, Isidore H., 1000 Connecticut Ave., Washington 6.
Wachter, James R., 3620 Porter St., N. W., Washington 16.
Wagner, Warren H., Investment Bldg., Washington 5.
Walker, Wallace H., 5315 Massachusetts Ave., N. W., Washington 16.
Wall, Thomas H., Munsey Bldg., Washington 4.
Warner, Sturgis, Ging Bldg., Washington 6.
Wasserman, Jack, 4405 Sedgwich St., N. W., Washington 16.
Watson, Robert C., 815 15th St., N. W., Washington 5.
Webb, William H., 1028 Connecticut Ave., N. W., Washington 6.
Welch, Francis X., 425 13th St., N. W., Washington 4.
Welch, Vincent B., 710 14th St., N. W., Washington 5.
Werner, Jack, 777 14th St., N. W., Washington.
Westwood, Howard C., Union Trust Bldg., Washington 5.
Whalen, Frank James, Jr., 2000 Massachusetts Ave., N. W., Washington 6.
Whelan, John W., 506 E St., N. W., Washington 1.
Wilkins, John Robinson, 806 Connecticut Ave., N. W., Washington 6.
Wilkinson, Glen A., 1616 H St., N. W., Washington 6.
Williams, Edward Brown, Washington Bldg., Washington 5.
Williams, James D., Jr., 734 15th St., N. W., Washington 7.
Willis, John W., 1735 De Sales St., N. W., Washington 6.
Wilner, Morton H., Wyatt Bldg., Washington 5.
Wilson, J. Randolph, Union Trust Bldg., Washington 5.
Wilson, Louisa, 2818 Wisconsin Ave., N. W., Washington 7.
Winchell, John H., 5905 Osceola Rd., N. W., Washington 16.
Winn, Arthur L., Jr., Continental Bldg., Washington 5.
Wohlstetter, Alan F., 1518 K St., N. W., Washintgon 5.
Wolf, Justin R., 1625 K St., N. W., Washington 6.

DISTRICT OF COLUMBIA—Cont'd

Worsley, James R., Jr., Ring Bldg., Washington 6.
Wright, Dale Alan, 5017 Rodmon Rd., N. W., Washington 16.

FLORIDA

Alley, Raymond C., 321 Royal Poinciana Plaza, S., Palm Beach.
Beverly, Phil C., 500 Water St., Jacksonville 2.
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Bowden, Otto Roy Thomas, Smith Bldg., Jacksonville 2.
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Cork, T. C., Roe Bldg., Clermont.
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Davis, Darrey A., 1226 Algardi Ave., Coral Gables.
Farrior, J. Rex, 709 Franklin St., Tampa 2.
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Fokes, W. Robert, Midyette-Moor Bldg., Tallahassee.
Fowler, Cody, Citizens Bldg., Tampa 2.
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Rust, Robert Warren, Federal Bldg., Box 1070, Miami 32.
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Schwartz, Dan R., Professional Bldg., Jacksonville 2.
Shackleford, T. M., Jr., Tampa Theatre Bldg., Tampa.

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Yancey, Hervey, Dupont Bldg., Miami 32.

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Brennan, Joseph B., First Nat'l Bank Bldg., Atlanta 3.
Byrd, Dan M., Jr., Hurt Bldg., Atlanta 3.
Candler, John S., II, Palmer Bldg., Atlanta 3.
Constangy, Frank A., Candler Bldg., Atlanta 3.
Cosper, Harvey L., 2895 Nancy Creek Rd., N. W., Atlanta 5.
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Howell, Hugh H., Jr., Mark Bldg., Atlanta 3.
Jones, C. Baxter, Persons Bldg., Macon 1.
Kell, D. Franklin, Healey Bldg., Atlanta.
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Reeves, Rex Thames, Chandler Bldg., Atlanta 3.
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Rox, Frank F., Atlanta Airport, Atlanta.
Russell, Harold L., C. & S. Nat'l Bank Bldg., Atlanta 3.
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Black, Paul Peter, 38 S. Dearborn St., Chicago 3.
Blender Dorothea, 4025 W. Peterson Ave., Chicago 46.
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Boynton, Ben B., Security Bldg., Springfield.
Brody, Robert L., 330 S. Wells St., Chicago 6.
Bullard, Edward M., 72 W. Adams St., Chicago 3.
Burchmore, Robert N., Field Bldg., Chicago 3.
Burns, Martin F., 120 S. La Salle St., Chicago 3.
Burns, William Grady, 135 S. La Salle St., Chicago 3.
Cascio, Anthony J., 221 N. La Salle St., Chicago 1.
Cassell, Martin L., Jr., 139 W. Van Buren St., Chicago 5.
Chadwell, John T., 135 S. La Salle St., Chicago 3.
Chaffetz, Hammond E., Prudential Plaza, Chicago 1.
Chartrand, Joseph S., Board of Trade Bldg., Chicago 4.
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Connery, John M., 122 S. Michigan Ave., Chicago 3.
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Engelhardt, William R., 100 W. Monroe St., Chicago 3.
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Hale, G. E., 120 W. Adams St., Chicago 3.
Halfpenny, Harold T., 111 W. Washington St., Chicago 2.
Helmer, Hansen, 122 S. Michigan Ave., Chicago 3.
Hayes, Edward B., 135 S. La Salle St., Chicago 3.
Heindl, Warren A., 30 N. La Salle St., Chicago 2.
Herndon, Gray, Illinois Bldg., Springfield.
Hirsch, Albert, 39 S. La Salle St., Chicago 3.
Jacobs, Joseph M., Corn Products Bldg., Chicago 6.
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Roach, F. Vinson, 2223 Dodge St., Omaha 1.
Shrout, Clayton H., City Nat'l Bank Bldg., Omaha.
Stern, Donald L., City Nat'l Bank Bldg., Omaha 2.
Svoboda, R. E., City Nat'l Bank Bldg., Omaha 2.

NEVADA

Anglim, Morgan, Box 249, Reno.
Chrislaw, John L., 555 S. Center St., Reno.
Folsom, George, 150 N. Center St., Reno.

NEW HAMPSHIRE

Devine, Maurice F., 1838 Elm St., Manchester.
Snow, Conrad E., RFD 1, Box 79, Gilmanton Iron.
Upton, Robert W., Concord.

NEW JERSEY

Autenrieth, Joseph F., 501 Grand Ave., Asbury Park.
Bartenstein, Fred, Jr., Merck & Company, Inc., Rahway.
Biunno, Joseph J., 605 Broad St., Newark 2.
Blake, William H., 80 Park Pl., Newark 1.
Boylan, Matthew P., 210 S. Burnet, East Orange.
Caputo, William J., 40 Journal Sq., Jersey City 6.
Cohen, Louis J., 744 Broad St., Newark.
Cooke, Thomas Turner, 71 MacCulloch, Morristown.
D'Agostino, Amerigo, 1060 Broad St., Newark 2.
Davis, Joseph Anthony, 1 Exchange Pl., Jersey City 2.
Eichler, A. Albert, 1060 Broad St., Newark 2.
Flynn, Bernard F., Jr., 1060 Broad St., Newark 2.
Fredericks, Murray, Schwehm Bldg., Atlantic City.
Gallagher, Henry M., Jr., 13 Woodstone Rd., Basking Ridge.
Goodman, Samuel M., 1060 Broad St., Newark 2.
Haines, Martin L., 200 High St., Mount Holly.
Hannoch, Herbert J., 17 Academy St., Newark.
Hardin, John R., Jr., 500 Broad St., Newark.
Harrison, Joseph, 744 Broad St., Newark 2.
Hendrickson, Robert C., 21 Cooper St., Woodbury.
Kean, Hamilton Fish, 744 Broad St., Newark 2.
Kirkman, Elwood F., Boardwalk Nat'l Bldg., Atlantic City.
Klinger, Allan H., 40 Journal Square, Jersey City 6.
Labrecque, Theodore J., 99 Grange Ave., Fair Haven.
McKenna, Jerome B., 6 Stanworth Lane, Princeton.
Milmed, Leon S., 111 Farley Rd., Short Hills.

NEW JERSEY—Cont'd

O'Brien, James F. X., 17 Academy St., Newark 2.
Patten, Edward J., 313 State St., Perth Amboy.
Plone, Albert K., 511 Market St., Camden 2.
Rothbard, Samuel L., 744 Broad St., Newark 2.
Rubenstein, J. Mortimer, 45 Church St., Paterson 1.
Sailer, John R., 47 W. Grand St., Elizabeth.
Schiff, Norman N., 744 Broad St., Newark 2.
Silverstein, Jack, 236 E. Hanover St., Trenton.
Smith, Sylvester C., Jr., Prudential Plaza, Newark 1.
Tepper, Jules E., 1060 Broad St., Newark 2.
Ward, Waldron M., 500 Broad St., Newark 2.
Watson, Russell E., 390 George St., New Brunswick.
Weckstein, Herman B. J., 1060 Broad St., Newark 2.
Wegner, John C., 225 Derrom Ave., Paterson.
Wilentz, T. David, 117 Smith St., Perth Amboy.
Zerman, Samuel William, 4100 Park Ave., Weehawken.

NEW MEXICO

Girand, W. D., Box 1445, Hobbs.
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Norton, Merrill L., Box 1567, Lovington.
Payne, Oliver Ernest, 652 Galistero, Santa Fe.
Poole, Rufus G., Bank of New Mexico Bldg., Albuquerque.
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NEW YORK

Agata, Burton C., 100 E. Old Country Rd., Mineola, L. I.
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Anderson, Lloyd C., Box 590, Binghamton.
Anderson, Roy M., Box 731, Rye.
Angiolillo, Joseph, 25 Bergen St., Brooklyn 1.
Atkin, Irving Michael, 420 Lexington Ave., New York 17.
Awtry, J. H., 9 Stonehouse Rd., Scarsdale.
Bailey, Parker, 15 Broad St., New York 5.
Banno, Carl C., 105 Oakdale Ln., Roslyn Heights L. I.
Bardo, August J., Jr., Plumbrook Farm, RFD 1, Katonah.
Barnes, Albert MacC., 25 Broadway, New York 4.
Baron, George C., 103 Park Ave., New York 17.
Barry, John J., 1 Hunter St., Long Island City 1.
Bartels, John R., 271 Washington St., Brooklyn 1.
Bass, Milton A., 342 Madison Ave., New York 17.
Bates, G. Wallace, 140 West St., New York 7.
Bell, Robert C., Jr., 180 Madison Ave., New York 16.
Benjamin, Robert M., 1 E. 44th St., New York 17.
Berger, Albert, 87-30 204th St., Hollis 23.

NEW YORK—Cont'd

Berlack, Harris, 26 Broadway, New York 4.
Berman, Alfred, 80 Pine St., New York 5.
Berman, David T., 26 Court St., Brooklyn 2.
Bernstein, Hilliard L., 165 Broadway, New York 6.
Bouck, Warner M., 107 Columbia St., Albany 7.
Bradford, Raymond H., 388 Broadway, Newburgh.
Brauner, Herman M., 120 Broadway, New York 5.
Brauner, Julius F., 485 Madison Ave., New York 22.
Brick, Francis A., Jr., 2 Wall St., New York 5.
Brodsky, David, 71 Minerva Dr., Tuckahoe.
Brodsky, Samuel, 551 Knickerbocker, Brooklyn 21.
Brokaw, Clifford V., III, 14 Wall St., New York 5.
Brooks, Robert D., 466 Lexington Ave., New York 17.
Browde, Leonard, 2555 Bainbridge Ave., Bronx 58.
Brown, Sumner A., Box 161, Plattsburgh.
Burstein, Herbert, 160 Broadway, New York 38.
Carroll, James E., 15 Broad St., New York 5.
Carroll John B., Larner Bldg., Syracuse 2.
Carrow, Milton M., 230 Park Ave., New York 17.
Cassidy, Adrian C., 195 Broadway, New York 7.
Castaldi, Michael A., 500 Fifth Ave., New York 36.
Chanler, William C., 40 Wall St., New York 5.
Chattaway, Charles W., 60 E. 42d St., New York 17.
Chess, Maurice, 21 Fern St., New Rochelle.
Chopnick, Max, 9 E. 46th St., New York 17.
Christiansen, Robert, 79 Harvest Rd., Fairport.
Clare, William F., Jr., 44 Wall St., New York 5.
Cohen, David Q., 60 John St., New York 38.
Cohen, Harold J., 195 Broadway, New York 7.
Cohen, Leslie Hirch, University Bldg., Syracuse.
Cohen, William I., 11 Park Pl., New York 7.
Cohn, Herbert B., 2 Broadway, New York 4.
Colburn, J. Bradley, 25 Broadway, New York 4.
Colgren, John Harold, 466 Lexington Ave., New York 17.
Colton, David J., 120 Broadway, New York 5.
Cooper, C. William, 30 Rockefeller Plaza, New York 20.
Corbin, Sol Neil, 1 Chase Manhattan Plaza, New York 5.
Covington, Hayden C., 124 Columbia Heights, Brooklyn 1.
Crabill, Frank W., 40 Wall St., New York 5.
Crouse, Cecil I., 350 Madison Ave., New York.
Cummings, G. Clark, 120 Broadway, New York 5.
Currie, Francis, 40 Wall St., New York.
Cusumano, Gaspare M., 44 Whitehall St., New York 4.
Davis, Richard T., 165 Broadway, New York 6.
Davis, Virginia E., 11 Broadway, New York 4.
Davis, William H., 30 Broad St., New York 4.
Deming, Leslie H., State Tower Bldg., Syracuse.

NEW YORK—Cont'd

Dicke, Richard MacLane, 120 Broadway, New York 5.
Dohl, Paul R., Eaton Ave., Norwich.
Doyle, John C., 16 Court St., Brooklyn 2.
Dubroff, Edward L., 50 Court St., Brooklyn 1.
Duncan, John V., 1 Wall St., New York 5.
Dunn, Stannard, 25 Boadway, New York.
Easton, William G., USA Elm Hq AFSE, Navy 510 FPO, New York.
Edelman, Joshua, 100 Church St., New York 7.
Ehrhardt, Laurence C., 155 E. 44th St., New York 17.
Eisinger, Irwin J., 1535 Undercliff Ave., New York 53.
Elliott, Shelden D., 40 Washington Sq., S., New York.
Engelson, David M., 347 Fifth Ave., New York 16.
Ennis, Edward J., 165 Broadway, New York 6.
Falls, Raymond L., Jr., 80 Pine St., New York 5.
Feldman, Justin N., 415 Madison Ave., New York 17.
Ferguson, John J., 420 Lexington Ave., New York 17.
Fernicola, Anthony J., First Nat'l Bank Bldg., Utica.
Ferster, Herbert, 15 E. 26th St., New York 10.
Fischer, Samuel, 545 Fifth Ave., New York 17.
Fletcher, Stephen H., 195 Broadway, New York 7.
Ford, Sumner, 15 Broad St., New York.
Fougner, Robert S., 132 Elderfields Rd., Manhasset, L. I.
Fowler, James A., Jr., 80 Pine St., New York 5.
Fried, Elmer, 295 Madison Ave., New York 17.
Friedgen, Herbert G., 271 Madison Ave., New York 16.
Frosch, Aaron R., 120 E. 56th St., New York 22.
Fuller, Wm E., 120 Broadway, New York 5.
Gaffney, Warren N., 60 John St., New York 38.
Gallagher, Harold J., 15 Broad St., New York 5.
Garfinkel, Barry H., 551 Fifth Ave., New York 17.
George, George E., 30 Broad St., New York 4.
Gerber, Bertrand D., 119 W. 57th St., New York.
Giardino, Alfred, 165 Broadway, New York.
Gilbert, Albert M., 1 E. 44th St., New York 17.
Glines, Kenneth W., 10 Lowell Pl., Fredonia.
Golub, William W., 3 E. 54th St., New York 22.
Goodman, Jack, 90 State St., Albany.
Goodstein, George, 369 Lexington Ave., New York 17.
Gore, Sanford L., 6837 Harrow St., Forest Hills 75.
Graham, Robert L., Jr., 10 Rockefeller Plaza, New York 20.
Greenman, Frederick F., 20 Pine St., New York.
Grenier, Edward J., 545 Fifth Ave., New York 17.
Gross, Albert M., 75 Park Terr., E., New York 34.

NEW YORK—Cont'd

Grossman, Harry, 545 Fifth Ave., New York 17.
Hale, Hamilton O., 122 E. 42d St., New York 17.
Halpern, Alexander, 342 Madison Ave., New York 17.
Halpern, Philip, Erie County Hall, Buffalo 2.
Handler, Milton, 425 Park Ave., New York 22.
Harper, Harold, 70 Pine St., New York.
Haynes, Robert B., 25 Broadway, New York.
Heggy, Donald R., 350 Madison Ave., New York 17.
Heiges, Jesse G., 235 E. 42d St., New York 17.
Hendrickson, F. R., 2563 Clover St., Rochester 18.
Herzog, Paul M., 477 Madison Ave., New York 22.
Hirschowitz, Samuel A., 80 Centre St., New York 13.
Hoffman, Malcolm A., 285 Madison Ave., New York 17.
Hoge, James F., 41 E. 42d St., New York 17.
Horgan, Charles S., 111 Broadway, New York 6.
Hurlbert, Leroy H., 82 Penhurst Park, Buffalo 22.
Isaacs, Myron S., 3 E. 54th St., New York 22.
Isaacson, William J., 425 Park Ave., New York 22.
James, Daniel, 80 Pine St., New York 5.
Jarvis, Robert B., 115 Broadway, New York 6.
Jones, Robert H., III, 90 State St., Albany 7.
Jones, Tilford A., 120 E. 41st St., New York 17.
Joyner, Quintard, 120 Wall St., New York 5.
Judd, Orrin G., 644 Madison Ave., New York 21.
Julien, Jay, 156 W. 44th St., New York 36.
Kadane, David K., 73 Porterfield Pl., Freeport, L. I.
Kaminsky, Michael, 122 E. 42d St., New York 17.
Kanter, Edward L., 250 Park Ave., New York 17.
Kaplan, Daniel Richard, 285 Madison Ave., New York 17.
Katcher, Monroe I., II, 305 Broadway, New York 7.
Kaufman, Abraham, 55 Liberty St., New York 5.
Kaufman, Joseph W., 511 Fifth Ave., New York 17.
Kellick, William L., Jr., 770 Main St., Niagara Falls.
Kent, William J., Jr., 4825 Metropolitan Ave., Brooklyn 37.
Keyes, George T., 111 John St., New York 38.
Kittelle, Sumner S., 15 Broad St., New York 5.
Kline, Joseph V., 20 Broad St., New York 5.
Koenigsberg, Joshua S., 15 Park Row, New York 38.
Kostelanetz, Boris, 52 Wall St., New York 5.
Kreutzer, S. Stanley, 32 Broadway, New York 4.
Kulze, Richard, 70 Wall St., New York 5.
LaPorte, Cloyd, 40 Wall St., New York.
Laufer, Arthur M., 70 Pine St., New York 5.
Lazarus, Gustav, 60 E. 42d St., New York 17.

NEW YORK—Cont'd

Le Boeuf, Randall J., Jr., 1 Chase Manhattan Plaza, New York 5.
Lenley, Jay E., 375 Park Ave., New York 22.
Lent, Frank B., 100 Park Ave., New York 17.
Leon, Edward J., 9 E. 40th St., New York 16.
Levin, Milton M., 521 Fifth Ave., New York 17.
Levine, Joshua, 1 E. 44th St., New York 17.
Lindsay, James K., 342 Madison Ave., New York 17.
Lofrisco, Anthony F., 770 Lexington Ave., New York 21.
Lukingbeal, Kent V., 40 Wall St., New York 5.
Lyon, Charles S., 70 E. 90th St., New York 28.
Maddy, Elmer C., 120 Broadway, New York 5.
Madigan, Francis V., 299 Broadway, New York 7.
Mahoney, J. Daniel, 113-13 76th Rd., Forest Hills 75.
Mahoney, John Regan, 26 Broadway, New York 4.
Malino, Jerome E., 10 E. 40th St., New York 16.
Maloney, Walter E., 40 Wall St., New York 5.
Maltinsky, Herbert L., 185 Montague St., Brooklyn 1.
Mangano, Benedict T., 112 State, Albany.
Markhoff, Abraham, 401 Broadway, New York 13.
McAlevey, John F., Eagle Valley Rd., Sloatsburg.
McAllister, Breck P., 2 Wall St., New York 5.
McCain, Samuel Adams, 717 Fifth Ave., New York 22.
McCarville, Gerald A., 1045 Sixth Ave., New York 18.
McCarthy, Matthew E., 29 Broadway, New York 6.
McDonald, J. Edgar, 466 Lexington Ave., New York 17.
McDowell, Mamie, 60 St. Marks Pl., New York 3.
McFadden, Thomas J., 2 Wall St., New York 5.
McInerny, Gilbert S., 22 E. 40th St., New York 16.
McKenna, Thomas J., 39 Broadway, New York 6.
McLean, Roger T., 14 W. 49th St., New York 20.
Menagh, Donald F., 32 E. 39th St., New York 16.
Meyer, Bernard S., 298 Linwood Ave., Cedarhurst.
Mezansky, Samuel, 350 Fifth Ave., New York 1.
Miles, William M., 166 W. 120th St., New York 27.
Miller, Murray A., 1619 Broadway, New York 19.
Miller, Paul Duryea, 20 Broad St., New York 5.
Millonzi, Robert I., 438 Main St., Buffalo 2.
Minor, Robert W., 466 Lexington Ave., New York 17.
Mollison, Irvin C., 201 Varick St., New York 14.
Monahan, Roy P., 37 Wall St., New York 5.
Moore, William J., 100 Park Ave., New York 17.
Moss, William C., 3427 Bedford Ave., Brooklyn 10.

NEW YORK—Cont'd

Myers, William M., SJA Hq VII Corps., APO 107, New York.
Naylon, Edmund B., 61 Broadway, New York 6.
Nebolsine, George, 488 Madison Ave., New York 22.
Neuberger, Paul, 16 W. 46th St., New York 36.
Oberst, Paul, New York University School of Law, New York 3.
O'Brien, Matthew H., 350 Fifth Ave., New York 1.
Ohlbaum, Stanley N., 42 Broadway, New York 4.
O'Malley, James, Jr., 1 Chase Manhattan Plaza, New York 5.
Otterbourg, Edwin M., 500 Fifth Ave., New York 36.
Palmer, Arthur E., Jr., 40 Wall St., New York 5.
Palmer, William P., 40 Wall St., New York 5.
Pearis, Samuel H., Press Bldg., Binghamton.
Peck, David W., 48 Wall St., New York 5.
Pepper, Morton, 55 Liberty St., New York 5.
Perlman, Bernard, 350 Fifth Ave., New York 1.
Pinney, Edward S., 15 Broad St., New York 5.
Pinsky, Norman M., 407 S. Warren St., Syracuse 2.
Pirie, John C., 135 E. 42d St., New York.
Polikoff, Harry, 76 Beaver St., New York 5.
Poth, Harry A., Jr., 2 Rector St., New York 6.
Rabb, Maxwell M., 61 Broadway, New York 6.
Rains, Harry H., Denton Bldg., Mineola.
Raphael, Sidney O., 18 E. 41st St., New York 17.
Ray, George W., Jr., 505 Park Ave., New York 22.
Ray, John H., 57 Bay St., Staten Island 1.
Ray, Kenneth B., 161 E. 42d St., New York 17.
Raybin, George Nims, 280 Broadway, New York 17.
Re, Edward D., 223 Bay Ridge Pkwy., Brooklyn 9.
Reeves, William Harvey, 20 Exchange Pl., New York 5.
Roberts, George, 40 Wall St., New York 5.
Rode, John D., 342 Madison Ave., New York 17.
Rogers, Dorothy S., 325 E. 41st St., New York 17.
Rowe, Samuel, 47 Featherbed Lane, Bronx 52.
Rozinsky, Jacob W., 25 Broadway, New York 4.
Ruben, Robert J., 41 E. 42d St., New York 17.
Rutenberg, John W. M., 233 Broadway, New York 7.
Ryan, Mark J., 60 E. 42d St., New York 17.
Sadtler, H. Plitt, Jr., 1230 Sixth Ave., New York 20.
St. John, Edward S., 1 Eastern Crest Rd., Port Washington, L. I.
Salzman, Sidney J., Times Square Bldg., Rochester 14.
Samuels, Aaron D., 389 Fulton St., Farmingdale.
Sanborn, Frederic R., 15 Garden Pl., Brooklyn 1.
Savell, Irving, 115 Broad St., New York 4.
Schamus, Sanford L., 777 West End Ave., New York 25.

NEW YORK—Cont'd

Schoonmaker, George B., 30 Rockefeller Plaza, New York 20.
Schwartz, Aileen H., 60 Sutton Pl., S., New York 22.
Shattuck, Edwin P., 42 Broadway, New York.
Shepard, Charles, 45 Exchange St., Rochester 14.
Sherman, Saul L., 25 Broadway, New York 4.
Shertzer, George E., 730 Third Ave., New York 17.
Shivitz, David I., 25 Gesner Ave., Nyack 6.
Silliere, Edward A., 70 Pine St., New York 5.
Silverman, David B., 355 Lexington Ave., New York 17.
Siragusa, Angelo G., 64-96 84th Pl., Middle Village 79.
Slate, John H., 551 Fifth Ave., New York 17.
Sokolow, Asa D., 575 Madison Ave., New York 22.
Sovik, Laurence, Empire Bldg., Syracuse 2.
Spater, George A., 633 Third Ave., New York 17.
Spruance, Peter Benton, 2 Wall St., New York 5.
Stentzel, Lawrence L., II, 122 E. 42d St., New York 17.
Stockman, Abram H., 36 W. 44th St., New York 36.
Stone, Oliver L., R.C.A. Bldg., New York 20.
Stryker, Joseph M., 70 Pine St., New York 5.
Swatland, Donald C., 15 Broad St., New York 5.
Swenson, William G., 140 West St., New York 7.
Teller, Ludwig, 295 Madison Ave., New York.
Tenney, John Wool G., 40 Wall St., New York 5.
Throop, Allen E., 20 Exchange Pl., New York 5.
Tilden, Richard A., 441 Lexington Ave., New York 22.
Tischler Louis Norman, 277 E. 207th St., Bronx.
Titus, Harvey L., 420 Lexington Ave., New York 17.
Toch, Ruth Kessler, Department of Law, Albany.
Trask, Benjamin H., Box 1281, New York 17.
Tsoucalas, Nicholas, 170 Broadway, New York 38.
Tuttle, Charles H., 15 Broad St., New York 5.
Tweed, Harrison, 15 Broad St., New York 5.
Twombly, Edward B., 165 Broadway, New York 6.
Van Voorhies, M., 20 Exchange Pl., New York 5.
Vogel, Harold, 161 E. 42d St., New York 17.
Walton, M. Lauck, 2 Wall St., New York 5.
Wegman, J. Bertram, Borough Hall, Brooklyn 1.
Weiden, Paul, 60 E. 42d St., New York 17.
Weil, Gilbert H., 60 E. 42d St., New York 17.
Weisl, Edwin L., Jr., 120 Broadway, New York 5.
Weiss, Bernard, 136 E. 57th St., New York.
Wels, Richard H., 341 Madison Ave., New York 17.
Whipple, Taggart, 15 Broad St., New York 5.
Whiteside, George W., 25 Broadway, New York 4.

NEW YORK—Cont'd

Wikler, Julius S., 50 Broad St., New York 4.
Wiles, Richard, Wilson Bldg., Syracuse.
Williams, C. Dickerman, 76 Beaver St., New York 5.
Williams, Chauncey P., Jr., 1 Chase Manhattan Plaza, New York 5.
Wingebach, Arthur D., 250 North St., White Plains.
Withrow, James R., Jr., 2 Wall St., New York 5.
Wolder, Stanley, 521 Fifth Ave., New York 17.
Wynn, James O., 1 E. 44th St., New York 17.
Zartman, Leonard S., 31 Exchange St., Rochester 14.
Zitner, Robert J., 1750 Ocean Pkwy., Brooklyn 23.
Zuckerbrot, Frank, 8 W. 40th St., New York 18.
Zweibel, Morris, 111 Fourth Ave., New York 3.

NORTH CAROLINA

Dolan, Thomas E., Box 5284, Asheville.
Dorey, Donald J., Box 239, Roxboro.
Frazier, Robert H., Box 97, Greensboro.
Jenkins, John R., Jr., Aulander.
McMillan, James B., Wachovia Bldg., Charlotte 2.
Poisson, Louis J., Sr., 318 S. Third St., Wilmington.
Robbins, H. Haywood, Addison Bldg., Charlotte 2.
Shaw, John D., 121 Hermitage Rd., Charlotte 7.
Worcester, Ben D., 517 Insurance Lane, Charlotte 4.

NORTH DAKOTA

Hoadley, Arthur T., Box 924, Bismarck.
Jestrab, Frank F., Box 1343, Williston.
McCann, Paul J., First Nat'l Bank Bldg., Bismarck.
Sperry, Floyd B., Hillcrest Acres, Bismarck.
Van Osdel, Franklin J., First Nat'l Bank Bldg., Fargo.

OHIO

Adams, Harold F., 3131 W. Broad St., Columbus 4.
Agee, Kenneth, 50 W. Broad St., Columbus 15.
Allen, Winston C., Trust Bldg., Newark.
Bailey, William E., First Nat'l Bank Bldg., Springfield.
Bennett, Herd L., 110 E. Main St., Eaton.
Bloomenthal, Lawrence R., Leader Bldg., Cleveland 14.
Bretherton, Thomas S., 3155 River Rd., Toledo 14.
Britz, Max, 317 Superior St., Toledo.
Browne, Bitner, First Nat'l Bank Bldg., Springfield.
Burgess, Roger H., Union Commerce Bldg., Cleveland 14.
Burneson, Taylor C., 50 W. Broad St., Columbus 15.

OHIO—Cont'd

Caren, John M., 50 W. Broad St., Columbus 15.
Carson, Henderson H., First Nat'l Bank Bldg., Canton 2.
Clarke, Owen, Terminal Tower Bldg., Cleveland 1.
Collins, Laurence E., Fidelity Savings Bldg., Cincinnati 12.
Corrigan, William J., Williamson Bldg., Cleveland 14.
Crabbe, J. Roth, 8 E. Broad St., Columbus 15.
Culp, Maurice S., Western Reserve University, Cleveland 6.
de Bruyn Kops, Julian, Box 1034, Dayton 2.
Dunbar, Frank C., Jr., 50 W. Gay St., Columbus 15.
Fowler, William E., Jr., Mahoning Bank Bldg., Youngstown 3.
Gallagher, Francis J., 811 Madison Ave., Toledo 4.
Garrett, Paul W., 1009 St. Gregory St., Cincinnati 2.
Genovese, Ernest R., 134 S. Main St., Akron 8.
Goldston, Eli, National City E. 6th Bldg., Cleveland 14.
Gorrell, James A., 52 E. Gay St., Columbus 15.
Heidkamp, B. William, Tri State Bldg., Cincinnati 2.
Hoskins, John A., Attorney General Office, Columbus 15.
Jackson, Raymond T., Union Commerce Bldg., Cleveland 14.
Jones, John Robert, 50 W. Gay St., Columbus 15.
Kaps, Charles T., 50 W. Broad St., Columbus 15.
Kennedy, Philip J., Union Central Bldg., Cincinnati.
Laird, W. Frederick, 99 N. Front St., Columbus 15.
Lansdale, John, Jr., Union Commerce Bldg., Cleveland 14.
Leibold, John W., 65 S. Front St., Columbus 15.
Lomen, Lucile, Box 132, Cincinnati 15.
Long, Bert H., Atlas Bank Bldg., Cincinnati.
Manley, James G., Fountain Sq. Bldg., Cincinnati 2.
May, Charles H.,Box 227, Circleville.
McCray, Samuel A., Talbott Bldg., Dayton 2.
McGuire, Catherine, 5308 N. High St., Columbus 14.
McHugh, John P., 2017 Mayfair Rd., Dayton 5.
Milligan, Fred J., 16 E. Broad St., Columbus 15.
Mintz, Alexander, 16800 Chagrin Blvd., Shaker Heights 20.
Moor, John H., Toledo Trust Bldg., Toledo 4.
Nelson, L. Clair, Champion Paper & Fibre Co., Hamilton.
Orn, Clayton L., 539 S. Main St., Findlay.
Pappas, Harry J., 361 Probasco Ave., Cincinnati 20.
Parriott, James D., 539 S. Main St., Findlay.
Pitt, Frank R., Box 913, Toledo 1.
Pomaranski, Val, 3912 E. 131st St., Cleveland 5.
Porter, Howard D., 2356 E. Hill Ave., Cincinnati 8.

OHIO—Cont'd

Prentice, Mary E., 33 N. High St., Columbus 15.
Quinn, William R., First Nat'l Bank Bldg., Canton 2.
Reiners, Fred G., First Nat'l Bank Bldg., Cincinnati 2.
Sanborn, Ralph W., Hartman Bldg., Columbus 15.
Seasongood, Murray, Union Central Bldg., Cincinnati 2.
Shocknessy, James W., 17 S. High St., Columbus.
Skulina, Thomas R., 1324 W. Third St., Cleveland 13.
Smoot, Thurlow B., 55 Public Square Bldg., Cleveland 13.
Spear, George A., Jr., 2887 Attleboro Rd., Shaker Heights 20.
Steadman, Charles W., Union Commerce Bldg., Cleveland 14.
Stern, Leonard J., Huntington Bank Bldg., Columbus 15.
Thompson, C. Russell, Leveque-Lincoln Tower, Columbus.
Topper, Isadore, Huntington Bank Bldg., Columbus 15.
Troy, Orville A., Fountain Square Bldg., Cincinnati 2.
Tyler, Gordon H., 5720 Shady Oak St., Dayton 24.
Wagner, Glen Wilbert, R.R. 1, Box 226, Port Clinton.
Wall, Stuart S., 811 Madison Ave., Toledo 1.
Wanlass, Ralph Page, Champion Paper Co., Hamilton.
Williams, Curtis C., Jr., Union Commerce Bldg., Cleveland.
Williams, George C., 1717 E. 9th St., Cleveland 14.
Winter, Ralph A., Box 87, Lodi.

OKLAHOMA

Andress, R. J., Box 1979, Tulsa 2.
Bicking, Lewis J., Petroleum Bldg., Tulsa 3.
Burke, J. L., Box 1979, Tulsa.
Carlson, George A., Box 131, Tulsa 1.
Carter, Frank, Box 487, Enid.
Curlee, William D., Commerce Exchange Bldg., Oklahoma City 2.
Davis, Frank W., Route 3, Ada.
Delaney, W. A., Jr., Box 57, Ada.
English, Jack Balline, 6730 E. 24th St., Tulsa 14.
Hodges, D. E., Phillips Petroleum Co., Bartlesville.
Hunt, Cecil L., Box 1979, Tulsa 2.
Kesler, Frank, 4805 N. Pate St., Oklahoma City 7.
Kunkel, Elmer M., 1619 E. 62nd St., Tulsa 5.
La Coste., George L., Box 5144, Oklahoma City.
McInnis, Neill Pauls, Liberty Bank Bldg., Oklahoma City 2.
Merrill, Maurice H., University of Oklahoma, Norman.
Mosteller, L. Karlton, First Nat'l Bldg., Oklahoma Cty 2.
Mount, Conrad C., Box 1995, Oklahoma City 1.

OKLAHOMA—Cont'd

Quinlan, Wayne, Box 8653, Oklahoma City 14.
Rogers, John Box 911, Tulsa 1.
Russell, Stuart H., Liberty Bank Bldg., Oklahoma City 2.
Shelton, Troy, Box 990, Oklahoma City 1.
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Williams, T. Dwight, First Nat'l Bldg., Oklahoma City.
Winn, Perry Haskell, Box 10568, Oklahoma City 20.
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OREGON

Bullivant, R. R., Pacific Bldg., Portland 4.
Davidson, C. Girard, Equitable Bldg., Portland 4.
Day, Frank E., Wilcox Bldg., Portland 4.
Haley, George P., 615 24th St., Milwaukie.
Hall, Bruce M., Executive Bldg., Portland 4.
Hill, John W., American Bank Bldg., Portland 5.
Jones, George A., County Court House, Salem.
Kerr, Robert M., Equitable Bldg., Portland 4.
Lubersky, W. F., Pacific Bldg., Portland 4.
Maguire, Robert F., Pittock Block, Portland 5.
Maxwell, Richard B., First Federal Savings & Loan Bldg., Klamath Falls.
Miller, Robert Stevens, American Bank Bldg., Portland 5.
Phillips, Clarence D., Electric Bldg., Portland 5.
Rodgers, George L., Jr., Public Service Bldg., Portland 4.
Rossman, George, Supreme Court Bldg., Salem.
Smith, Allan A., Public Service Bldg., Portland 4.
Smith, Allan Hugh, 823 Iona Plaza, Portland 1.
Stoll, Norman A., Corbett Bldg., Portland 4.
Swan, Charles W., Box 428, Vale.
Tatum, Lofton L., Yeon Bldg., Portland 4.
White, Thomas J., Jackson Tower Bldg., Portland.

PENNSYLVANIA

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Aurich, Alfred C., 12 S. 12th St., Philadelphia 7.
Ballengee, James M., Box 6742, Philadelphia 32.
Banse, Robert L., Merck, Sharp & Dohme, West Point.
Bechman, Wm. G., Peoples Bank Bldg., Pittsburgh 22.
Bell, James A., Grant Bldg., Pittsburgh 19.
Bellwoar, Harry J. J., Jr., 12 S. 12th, Philadelphia 7.
Blaxter, G. Harold, Oliver Bldg., Pittsburgh 22.
Bloom, Israel C., Washington Trust Bldg., Washington.
Brodsky, Alexander, Bankers Securities Bldg., Philadelphia 7.

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Chaitkin, Maurice, Commonwealth Bldg., Pittsburgh 22.
Davis, Edward, 215 S. Broad St., Philadelphia 7.
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Douglass, Paul F., 1300 Old Gulph Rd., Rosemont.
Edelman, Paul D., 614 Washington St., Reading.
Eiseman, Jay H., Philadelphia Bank Bldg., Philadelphia 7.
Elsbree, Wayland H., Land Title Bldg., Philadelphia.
Eshelman, Joseph F., 3 Penn Center Plaza, Philadelphia 2.
Feldmann, Louis Geo., Markle Bank Bldg., Hazleton.
Fink, David, Coulter Bldg., Greensburg.
Finkelhor, Marion K., 118 Hastings, Pittsburgh 6.
Fisher Robert M., Savings & Trust Co. Bldg., Indiana.
Forer, Morris L., Packard Bldg., Philadelphia 2.
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Martin, John B., Land Title Bldg., Philadelphia.
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Spofford, William R., Land Title Bldg., Philadelphia.
Stahl, David, City County Bldg., Pittsburgh 19.
Stevens, Lewis M., Western Savings Fund Bldg., Philadelphia 7.
Stewart, Wallace D., Pennsylvania Station, Pittsburgh 22.
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Brin, Royal H., Jr., Fidelity Union Life Bldg., Dallas 1.
Buck, Hugh Q., Bank of Southwest Bldg., Houston 2.
Callaway, Carl B., Fidelity Union Tower, Dallas 1.
Carp, Elizabeth, Fidelity Union Bldg., Dallas 1.
Christopher, T. S., Continental Life Bldg., Fort Worth 2.
Clinton, Leonard Guy, Jr., Bank of Southwest Bldg., Houston 2.
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Gay, Donald G., Kirby Bldg., Dallas 1.
Gayle, Gibson, Jr., Bank of Southwest Bldg., Houston 2.
Giller, Jefferson D., Bank of Southwest Bldg., Houston 2.
Gough, James Rowland, 3025 Glen Haven Blvd., Houston 25.
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Hall, Gordon, 3020 S. Haskell, Dallas.
Hallman, Leroy, First Nat'l Bank Bldg., Dallas 1.
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Johnson, Gillis A., Sinclair Bldg., Fort Worth 2.
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Lanham, Joe T., Perry Brooks Bldg., Austin 1.
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Neary, William D., Republic Nat'l Bank Bldg., Dallas 1.
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Red, Walter Scott, Texas Nat'l Bank Bldg., Houston 2.
Reid, Joe, Transit Tower, San Antonio 5.
Rice, J. P., Mercantile Dallas Bldg., Dallas 1.
Richardson, John D., Shell Bldg., Houston 2.
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Trotti, Robert S., Fidelity Union Tower, Dallas 1.
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Wadlington, Dewey R., C & I Life Bldg., Houston 2.
Walker, James Herbert, Exchange Bank Bldg., Dallas 35.
Wells, L. N. D., Jr., National Bankers Life Bldg., Dallas 1.
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Wilson, Austin C., Bank of Southwest Bldg., Houston 2.
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Woodfin, Gene M., First City Nat'l Bank Bldg., Houston 2.

UTAH

Conder, Dean E., Newhouse Bldg., Salt Lake City 11.
Dwyer, Robert G., Kearns Bldg., Salt Lake City.
Elggren, C. Allen, Walker Bank Bldg., Salt Lake City 11.
Gustin, Harley W., Walker Bank Bldg., Salt Lake City 11.
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Mock, H. Byron, Continental Bank Bldg., Salt Lake City 1.
Oman, Milton A., Continental Bank Bldg., Salt Lake City 1.
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VERMONT

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